

Message

From: US EPA Notes Software Authority [US_EPA_Notes_Software_Authority@epa.gov]
Sent: 12/15/2022 7:06:15 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]
CC: Angeles, Mary [Angeles.Mary@epa.gov]
Subject: Receipt confirmation for your eFiling

Hello Efren Ordonez,

We've received your document submission as follows:

Case Name: Double M Properties...
Case Number: CWA-06-2022-1772
Role: Complainant
File name: Double M motion to extend 12-14-22.pdf
Received: 12/15/2022 2:06:15 PM
Filing ID: PINT-CM5QDA
Description: Motion to extend prehearing order deadlines since parties have almost finalized CAFO language. auge

While most electronic filings are handled the same business day, it can take up to two business days to process your documents. You will receive notification from the clerk if there is any problem with the submission.

If you have questions about your submission please use the information above as a reference when you contact the clerk.
Thank you for eFiling with the Office of Administrative Law Judges.
Please do not reply to this email, instead contact the office through the website:
EPA: Office of the Administrative Law Judges (OALJ): <https://www.epa.gov/oalj/contact.htm>

Message

From: US EPA Notes Software Authority [US_EPA_Notes_Software_Authority@epa.gov]
Sent: 1/23/2023 6:28:34 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]
CC: Angeles, Mary [Angeles.Mary@epa.gov]
Subject: Receipt confirmation for your eFiling

Hello Efren Ordonez,

We've received your document submission as follows:

Case Name: Double M Properties...
Case Number: CWA-06-2022-1772
Role: Complainant
File name: Double M Properties CAFO.pdf
Received: 1/23/2023 1:28:32 PM
Filing ID: PINT-CNCPMN
Description:

While most electronic filings are handled the same business day, it can take up to two business days to process your documents. You will receive notification from the clerk if there is any problem with the submission.

If you have questions about your submission please use the information above as a reference when you contact the clerk.
Thank you for eFiling with the Office of Administrative Law Judges.
Please do not reply to this email, instead contact the office through the website:
EPA: Office of the Administrative Law Judges (OALJ): <https://www.epa.gov/oalj/contact.htm>

Message

From: Pete Domenici [pdomenici@domenicilaw.com]
Sent: 1/26/2023 4:45:45 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]
Subject: RE: Double M Properties

Thanks Efren.
I enjoyed meeting you and working with you.
Best Regards
Pete

From: Ordonez, Efren <Ordonez.Efren@epa.gov>
Sent: Thursday, January 26, 2023 9:43 AM
To: Pete Domenici <pdomenici@domenicilaw.com>
Subject: Double M Properties

Pete,

I am attaching the fully executed CAFO. As you already know, please note the payment provisions in the CAFO with the applicable deadlines.
Efren

Message

From: US EPA Notes Software Authority [US_EPA_Notes_Software_Authority@epa.gov]
Sent: 1/25/2023 10:42:59 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]
CC: Angeles, Mary [Angeles.Mary@epa.gov]
Subject: Receipt confirmation for your eFiling

Hello Efren Ordonez,

We've received your document submission as follows:

Case Name: Double M Properties...
Case Number: CWA-06-2022-1772
Role: Complainant
File name: Double M Proprties CAFO - signed.pdf
Received: 1/25/2023 5:42:58 PM
Filing ID: PINT-CNEULX
Description:

While most electronic filings are handled the same business day, it can take up to two business days to process your documents. You will receive notification from the clerk if there is any problem with the submission.

If you have questions about your submission please use the information above as a reference when you contact the clerk.
Thank you for eFiling with the Office of Administrative Law Judges.
Please do not reply to this email, instead contact the office through the website:
EPA: Office of the Administrative Law Judges (OALJ): <https://www.epa.gov/oalj/contact.htm>

Message

From: Angeles, Mary [Angeles.Mary@epa.gov]
Sent: 1/3/2023 7:31:40 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]; Pete Domenici [pdomenici@domicilaw.com]
Subject: Corrected Order IMO Double M Properties, Docket No. CWA-06-2022-1772
Attachments: 2023-01-03 - double m properties - order on complainants third motion for extension of prehearing order deadlines - issued.pdf

Hello. Please find attached a corrected order issued by Christine D. Coughlin, Administrative Law Judge in the above case proceeding. Kindly confirm your receipt of the document and please disregard the previous email. There was a typo in the document title of the attachment. Let me know if you have any questions. Thank you.

*Best,
Mary Angeles (she/ella)
Office of Administrative Law Judges*



Be kind to the environment.
Please do not print this email unless necessary.

Standard USPS Mail:
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Mail Code 1900R
Washington, DC 20460
Direct: 202.564.6281
Gen: 202.564.6255
Cell: 202-809-6807
Email: angeles.mary@epa.gov
Electronic Filing: https://yosemite.epa.gov/oa/eab/eab-alj_upload.nsf

Overnight USPS/FedEx/UPS:
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Ronald Reagan Building (MC 1900R)
1300 Pennsylvania Ave., N.W.
Suite M1200
Washington, DC 20004



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:)	
)	
Double M Properties,)	Docket No. CWA-06-2022-1772
)	
Respondent.)	

**ORDER ON COMPLAINANT’S THIRD MOTION FOR EXTENSION
OF PREHEARING ORDER DEADLINES**

This proceeding was initiated on July 7, 2022, with the filing of an Administrative Complaint by the Complainant, the Director of the Enforcement and Compliance Assurance Division of Region 6 of the U.S. Environmental Protection Agency (“Agency”) against Respondent, Double M Properties, pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g). Respondent subsequently filed an Answer to Administrative Complaint, in which Respondent denied the violations alleged in the Administrative Complaint and requested a hearing. After I was designated to preside over the proceeding, I issued a Prehearing Order setting deadlines for a number of prehearing procedures, including the filing of a fully-executed Consent Agreement and Final Order (“CAFO”) if the parties achieved settlement of this matter and a prehearing exchange of information by each party if settlement was not achieved in the meantime.

Since the issuance of the Prehearing Order, I have twice extended the deadlines for the prehearing exchange at Complainant’s request based on its representations regarding the parties’ efforts to settle this matter. On December 15, 2022, Complainant filed a third Motion for Extension of Prehearing Order Deadlines (“Motion”), in which Complainant represents that the parties have strived to finalize a CAFO but that the negotiation process has been hindered by the holidays and that the parties will still need to undertake the lengthy concurrence process once the parties have agreed on the language of the CAFO. Accordingly, Complainant requests a 45-day extension of the prehearing exchange deadlines to afford the parties sufficient time to complete those processes. Complainant represents that Respondent does not object to the requested extension.

This matter is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Rules of Practice”) set forth at 40 C.F.R. Part 22. The Rules of Practice provide that I “may grant an extension of time for filing any document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative.” 40 C.F.R. § 22.7(b).

Here, Complainant's Motion was timely and shows good cause. As reflected in the Rules of Practice, Agency policy supports settlement of a proceeding without the necessity of a formal hearing. 40 C.F.R. § 22.18(b)(1). Undoubtedly, the interests of the parties and judicial economy are well served by the parties resolving this matter informally and expeditiously. Accordingly, the Motion is hereby **GRANTED**. As requested, a fully-executed CAFO shall now be filed with the Regional Hearing Clerk on or before **February 27, 2023**, with a courtesy copy filed with the Headquarters Hearing Clerk. If the parties are unable to achieve settlement by that date, they shall file their prehearing exchanges pursuant to the following schedule:

February 27, 2023	Complainant's Initial Prehearing Exchange
March 20, 2023	Respondent's Prehearing Exchange
April 3, 2023	Complainant's Rebuttal Prehearing Exchange

SO ORDERED.


Christine Donelian Coughlin
Administrative Law Judge

Dated: January 3, 2023
Washington, D.C.

In the Matter of *Double M Properties*, Respondent.
Docket No. CWA-06-2022-1772

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order on Complainant's Third Motion for Extension of Prehearing Order Deadlines**, dated January 3, 2023, and issued by Administrative Law Judge Christine Donelian Coughlin, was sent this day to the following parties in the manner indicated below.



Mary Angeles
Paralegal Specialist

Original by OALJ E-Filing System to:

Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf

Copy by Electronic Mail to:

Efren Ordóñez
U.S. Environmental Protection Agency, Region 6
Email: ordonez.efren@epa.gov
Counsel for Complainant

Copy by Electronic and Regular Mail to:

Pete Domenici
Domenici Law Firm
320 Gold Avenue SW, Suite 1000
Albuquerque, NM 87102
Email: pdomenici@domenicilaw.com
Counsel for Respondent

Dated: January 3, 2023
Washington, D.C.

Message

From: Angeles, Mary [Angeles.Mary@epa.gov]
Sent: 11/7/2022 4:42:56 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]; Pete Domenici [pdomenici@domenicilaw.com]
Subject: Order IMO Double M Properties, Docket No. CWA-06-2022-1772
Attachments: 2022-11-07 - double m properties - order on complainants 2nd mot for ext of pho deadlines - issued.pdf

Hello. Please find attached an order issued by Christine D. Coughlin, Administrative Law Judge in the above case proceeding. Kindly confirm by replying upon receipt of the document. A hard copy will follow to Mr. Domenici by regular USPS mail. Let me know if you have any questions. Thank you.

*Best,
Mary Angeles (she/ella)
Office of Administrative Law Judges*



Be kind to the environment.
Please do not print this email unless necessary.

Standard USPS Mail:
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Mail Code 1900R
Washington, DC 20460
Direct: 202.564.6281
Gen: 202.564.6255
Cell: 202-809-6807
Email: angeles.mary@epa.gov
Electronic Filing: https://yosemite.epa.gov/oa/eab/eab-alj_upload.nsf

Overnight USPS/FedEx/UPS:
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Ronald Reagan Building (MC 1900R)
1300 Pennsylvania Ave., N.W.
Suite M1200
Washington, DC 20004



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:)	
)	
Double M Properties,)	Docket No. CWA-06-2022-1772
)	
Respondent.)	

**ORDER ON COMPLAINANT'S SECOND MOTION FOR EXTENSION
OF PREHEARING ORDER DEADLINES**

This proceeding was initiated on July 7, 2022, with the filing of an Administrative Complaint by the Complainant, the Director of the Enforcement and Compliance Assurance Division of Region 6 of the U.S. Environmental Protection Agency ("Agency") against Respondent, Double M Properties, pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g). Respondent subsequently filed an Answer to Administrative Complaint, in which Respondent denied the violations alleged in the Administrative Complaint and requested a hearing. After I was designated to preside over the proceeding, I issued a Prehearing Order setting deadlines for a number of prehearing procedures, including the filing of a Status Report by Complainant, a Preliminary Statement by each party, a fully-executed Consent Agreement and Final Order ("CAFO") if the parties achieved settlement of this matter, and a prehearing exchange of information by each party if settlement was not achieved in the meantime.

On September 9, 2022, Complainant timely filed a Preliminary Statement, as well as a combined Status Report and Motion for Extension of Prehearing Order Deadlines, in which Complainant requested a 45-day extension of the prehearing exchange deadlines set forth in the Prehearing Order on account of the parties' efforts to resolve this matter. I granted the unopposed request by Order dated September 16, 2022.

Complainant subsequently filed a second Motion for Extension of Prehearing Order Deadlines ("Motion") on November 3, 2022. Therein, Complainant represents that the parties are "very close to reaching a settlement in principle and are in the process of drafting language for a Consent Agreement and Final Order." Motion at physical page 1. Complainant then requests a 60-day extension of the deadlines set forth in the Order of September 16 because of the amount of time that Complainant expects to need to complete the concurrence process for the parties' CAFO, a process that, according to Complainant, may be impacted by the upcoming holidays. Complainant represents that Respondent does not object to the requested extension.


This matter is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice") set forth at 40 C.F.R. Part 22. The Rules of Practice provide that I

“may grant an extension of time for filing any document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative.” 40 C.F.R. § 22.7(b).

Here, Complainant’s Motion was timely and shows good cause. As reflected in the Rules of Practice, Agency policy supports settlement of a proceeding without the necessity of a formal hearing. 40 C.F.R. § 22.18(b)(1). Undoubtedly, the interests of the parties and judicial economy are well served by the parties resolving this matter informally and expeditiously. Accordingly, the Motion is hereby **GRANTED**. As requested, a fully-executed CAFO shall now be filed with the Regional Hearing Clerk on or before **January 13, 2023**, with a courtesy copy filed with the Headquarters Hearing Clerk. If the parties are unable to achieve settlement by that date, they shall file their prehearing exchanges pursuant to the following schedule:

January 13, 2023	Complainant’s Initial Prehearing Exchange
February 3, 2023	Respondent’s Prehearing Exchange
February 17, 2023	Complainant’s Rebuttal Prehearing Exchange

SO ORDERED.


Christine Donelian Coughlin
Administrative Law Judge

Dated: November 7, 2022
Washington, D.C.

In the Matter of *Double M Properties*, Respondent.
Docket No. CWA-06-2022-1772

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order on Complainant's Second Motion for Extension of Prehearing Order Deadlines**, dated November 7, 2022, and issued by Administrative Law Judge Christine Donelian Coughlin, was sent this day to the following parties in the manner indicated below.



Mary Angeles
Paralegal Specialist

Original by OALJ E-Filing System to:
Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf

Copy by Electronic Mail to:
Efren Ordóñez
U.S. Environmental Protection Agency, Region 6
Email: ordonez.efren@epa.gov
Counsel for Complainant

Copy by Electronic and Regular Mail to:
Pete Domenici
Domenici Law Firm
320 Gold Avenue SW, Suite 1000
Albuquerque, NM 87102
Email: pdomenici@domenicilaw.com
Counsel for Respondent

Dated: November 7, 2022
Washington, D.C.

Message

From: McDonald, Scott [mcdonald.scott@epa.gov]
Sent: 7/1/2022 5:40:49 PM
To: Vaughn, Lorena [Vaughn.Lorena@epa.gov]
CC: Ordonez, Efren [Ordonez.Efren@epa.gov]
Subject: RE: Answer to Administrative Complaint - Double M Properties

I will look now...and hopefully find and send.

Scott

From: Vaughn, Lorena <Vaughn.Lorena@epa.gov>
Sent: Friday, July 1, 2022 6:45 AM
To: McDonald, Scott <mcdonald.scott@epa.gov>
Cc: Ordonez, Efren <Ordonez.Efren@epa.gov>
Subject: RE: Answer to Administrative Complaint - Double M Properties

Good Morning to you both,

Hope you are both well.

Can you send me a copy of the complaint? Want to see the date it was filed, I can't find my copy.

Thank you.

Lorena

From: McDonald, Scott <mcdonald.scott@epa.gov>
Sent: Wednesday, June 29, 2022 6:20 PM
To: Vaughn, Lorena <Vaughn.Lorena@epa.gov>
Cc: Ordonez, Efren <Ordonez.Efren@epa.gov>
Subject: FW: Answer to Administrative Complaint - Double M Properties

Lorena,

Yes...this administrative case is assigned to Efren. I copied Efren above. Efren submitted a WAR on Double M Properties two-weeks ago. He can provide case status if needed. Thanks –

Scott

From: Vaughn, Lorena <Vaughn.Lorena@epa.gov>
Sent: Wednesday, June 29, 2022 4:40 PM
To: McDonald, Scott <mcdonald.scott@epa.gov>
Subject: FW: Answer to Administrative Complaint

Hi Scott,

Hope you are well.

Do you know who this case belongs too?

Trying to figure out when it got filed.

Thank you.

Lorena

From: Lorraine Hollingsworth <lhollingsworth@domenicilaw.com>
Sent: Wednesday, June 29, 2022 4:26 PM
To: Vaughn, Lorena <Vaughn.Lorena@epa.gov>
Cc: Pete Domenici <pdomenici@domenicilaw.com>
Subject: Answer to Administrative Complaint

Dear Lorena- attached please find the Answer to Administrative Complaint in Docket No. CWA-0602022-1772. I will also be mailing a hardcopy to you.

Regards,
Lorraine

*Lorraine Hollingsworth, Esq.
Domenici Law Firm, PC
320 Gold Ave SW Suite 1000
Albuquerque, NM 87102
505-883-6250*

From: Vaughn, Lorena <Vaughn.Lorena@epa.gov>
Sent: Wednesday, June 29, 2022 7:23 AM
To: Lorraine Hollingsworth <lhollingsworth@domenicilaw.com>
Subject: RE: Question about filing procedures

Good Morning,

You can do both by mail and you can email me the document and I can stamp it.
I will be out of the office starting tomorrow.

Thank you.

Lorena

From: Lorraine Hollingsworth <lhollingsworth@domenicilaw.com>
Sent: Tuesday, June 28, 2022 4:53 PM
To: Vaughn, Lorena <Vaughn.Lorena@epa.gov>
Subject: Question about filing procedures

Dear Ms. Vaughn- I'm an attorney in New Mexico and need to file an answer to an administrative complaint. I have your mailing address for the filing but was wondering if your office does electronic filing. I tried calling your office but was disconnected each time. I can be reached by email or at 1-505-554-0943.

Thank you,
Lorraine Hollingsworth

*Lorraine Hollingsworth, Esq.
Domenici Law Firm, PC
320 Gold Ave SW Suite 1000
Albuquerque, NM 87102
505-883-6250*

Message

From: Angeles, Mary [Angeles.Mary@epa.gov]
Sent: 1/3/2023 7:02:43 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]; Pete Domenici [pdomenici@domenicilaw.com]
Subject: Order IMO Double M Properties, Docket No. CWA-06-2022-1772
Attachments: 2022-11-07 - double m properties - order on complainants 2nd mot for ext of pho deadlines - issued.pdf

Hello. Please find attached an order issued by Christine D. Coughlin, Administrative Law Judge in the above case matter. Kindly confirm by replying upon your receipt of the document. A hard copy of the order will be mailed to Mr. Domenici by regular USPS mail. Let me know if you have any questions. Thank you.

*Best,
Mary Angeles (she/ella)
Office of Administrative Law Judges*



Be kind to the environment.
Please do not print this email unless necessary.

Standard USPS Mail:
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Mail Code 1900R
Washington, DC 20460
Direct: 202.564.6281
Gen: 202.564.6255
Cell: 202-809-6807
Email: angeles.mary@epa.gov
Electronic Filing: https://yosemite.epa.gov/oa/eab/eab-alj_upload.nsf

Overnight USPS/FedEx/UPS:
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Ronald Reagan Building (MC 1900R)
1300 Pennsylvania Ave., N.W.
Suite M1200
Washington, DC 20004



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:

Double M Properties,

Respondent.

)
)
)
)
)

Docket No. CWA-06-2022-1772

**ORDER ON COMPLAINANT'S THIRD MOTION FOR EXTENSION
OF PREHEARING ORDER DEADLINES**

This proceeding was initiated on July 7, 2022, with the filing of an Administrative Complaint by the Complainant, the Director of the Enforcement and Compliance Assurance Division of Region 6 of the U.S. Environmental Protection Agency ("Agency") against Respondent, Double M Properties, pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g). Respondent subsequently filed an Answer to Administrative Complaint, in which Respondent denied the violations alleged in the Administrative Complaint and requested a hearing. After I was designated to preside over the proceeding, I issued a Prehearing Order setting deadlines for a number of prehearing procedures, including the filing of a fully-executed Consent Agreement and Final Order ("CAFO") if the parties achieved settlement of this matter and a prehearing exchange of information by each party if settlement was not achieved in the meantime.

Since the issuance of the Prehearing Order, I have twice extended the deadlines for the prehearing exchange at Complainant's request based on its representations regarding the parties' efforts to settle this matter. On December 15, 2022, Complainant filed a third Motion for Extension of Prehearing Order Deadlines ("Motion"), in which Complainant represents that the parties have strived to finalize a CAFO but that the negotiation process has been hindered by the holidays and that the parties will still need to undertake the lengthy concurrence process once the parties have agreed on the language of the CAFO. Accordingly, Complainant requests a 45-day extension of the prehearing exchange deadlines to afford the parties sufficient time to complete those processes. Complainant represents that Respondent does not object to the requested extension.

This matter is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice") set forth at 40 C.F.R. Part 22. The Rules of Practice provide that I "may grant an extension of time for filing any document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative." 40 C.F.R. § 22.7(b).

Here, Complainant's Motion was timely and shows good cause. As reflected in the Rules of Practice, Agency policy supports settlement of a proceeding without the necessity of a formal hearing. 40 C.F.R. § 22.18(b)(1). Undoubtedly, the interests of the parties and judicial economy are well served by the parties resolving this matter informally and expeditiously. Accordingly, the Motion is hereby **GRANTED**. As requested, a fully-executed CAFO shall now be filed with the Regional Hearing Clerk on or before **February 27, 2023**, with a courtesy copy filed with the Headquarters Hearing Clerk. If the parties are unable to achieve settlement by that date, they shall file their prehearing exchanges pursuant to the following schedule:

February 27, 2023	Complainant's Initial Prehearing Exchange
March 20, 2023	Respondent's Prehearing Exchange
April 3, 2023	Complainant's Rebuttal Prehearing Exchange

SO ORDERED.


Christine Donelian Coughlin
Administrative Law Judge

Dated: January 3, 2023
Washington, D.C.

In the Matter of *Double M Properties*, Respondent.
Docket No. CWA-06-2022-1772

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order on Complainant's Third Motion for Extension of Prehearing Order Deadlines**, dated January 3, 2023, and issued by Administrative Law Judge Christine Donelian Coughlin, was sent this day to the following parties in the manner indicated below.



Mary Angeles
Paralegal Specialist

Original by OALJ E-Filing System to:

Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf

Copy by Electronic Mail to:

Efren Ordóñez
U.S. Environmental Protection Agency, Region 6
Email: ordonez.efren@epa.gov
Counsel for Complainant

Copy by Electronic and Regular Mail to:

Pete Domenici
Domenici Law Firm
320 Gold Avenue SW, Suite 1000
Albuquerque, NM 87102
Email: pdomenici@domenicilaw.com
Counsel for Respondent

Dated: January 3, 2023
Washington, D.C.

Message

From: McDonald, Scott [mcdonald.scott@epa.gov]
Sent: 7/8/2022 10:16:40 AM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]
Subject: FW: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista

Here's more below on Double M:

From: Smalley, Bryant <smalley.bryant@epa.gov>
Sent: Thursday, July 7, 2022 4:20 PM
To: Vaughn, Lorena <Vaughn.Lorena@epa.gov>; Johnson, Carol <johnson.carol@epa.gov>
Cc: Elder-Schweers, Pam <Elder-Schweers.Pam@epa.gov>; Jones, Curry <jones.curry@epa.gov>; McDonald, Scott <mcdonald.scott@epa.gov>
Subject: RE: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista

Looks like she just signed it. Trying to reach Curry or Carol to send it to you now.

B

From: Vaughn, Lorena <Vaughn.Lorena@epa.gov>
Sent: Thursday, July 7, 2022 4:04 PM
To: Smalley, Bryant <smalley.bryant@epa.gov>; Johnson, Carol <johnson.carol@epa.gov>
Cc: Elder-Schweers, Pam <Elder-Schweers.Pam@epa.gov>; Jones, Curry <jones.curry@epa.gov>; McDonald, Scott <mcdonald.scott@epa.gov>
Subject: RE: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista

I am not due to come into the office but I will if you need me to mail it out tomorrow.
Do you know if she would have it signed in the morning? So I can come in briefly then to do it?

From: Smalley, Bryant <smalley.bryant@epa.gov>
Sent: Thursday, July 07, 2022 4:01 PM
To: Vaughn, Lorena <Vaughn.Lorena@epa.gov>; Johnson, Carol <johnson.carol@epa.gov>
Cc: Elder-Schweers, Pam <Elder-Schweers.Pam@epa.gov>; Jones, Curry <jones.curry@epa.gov>; McDonald, Scott <mcdonald.scott@epa.gov>
Subject: RE: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista

Lorena – are you working tomorrow?

Not sure Cheryl will get it signed today,

B

From: Vaughn, Lorena <Vaughn.Lorena@epa.gov>
Sent: Thursday, July 7, 2022 3:14 PM
To: Smalley, Bryant <smalley.bryant@epa.gov>; Johnson, Carol <johnson.carol@epa.gov>
Cc: Elder-Schweers, Pam <Elder-Schweers.Pam@epa.gov>; Jones, Curry <jones.curry@epa.gov>; McDonald, Scott <mcdonald.scott@epa.gov>
Subject: RE: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista

It has to start all over again as a brand new one.

I will sign the certificate of service.

I am here until 4:30 p m but I can stay a bit longer if you need me to and make sure it gets out today.

Thank you.

From: Smalley, Bryant <smalley.bryant@epa.gov>

Sent: Thursday, July 07, 2022 3:10 PM

To: Johnson, Carol <johnson.carol@epa.gov>

Cc: Elder-Schweers, Pam <Elder-Schweers.Pam@epa.gov>; Jones, Curry <jones.curry@epa.gov>; Vaughn, Lorena <Vaughn.Lorena@epa.gov>

Subject: RE: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista

Okay – I just sent it to Cheryl and based on the names you put in the routing, asked her to send it back to Curry and cc Pam.

My understanding is Curry will send it to Lorena to sign the Certificate of Service (this should not be done by Cheryl) and she will send it out certified to the Company. Who is going to let the Company know they are going to receive it again (groundhogs day)?

Also, Did we determine if it needs to be re-Public Noticed? If so, Carol will add Lin to the Routing and request that he restart the public notice.

Is this everything??

B

From: Johnson, Carol <johnson.carol@epa.gov>

Sent: Thursday, July 7, 2022 2:11 PM

To: Jones, Curry <jones.curry@epa.gov>; Smalley, Bryant <smalley.bryant@epa.gov>

Cc: Elder-Schweers, Pam <Elder-Schweers.Pam@epa.gov>

Subject: RE: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista

Just spoke with Lorena. She asks if she can be sent an email with the PDF attached after Cheryl signs it, instead of routing it to her in eRouting. Also, she said she's fine with dating and signing the certificate of service if Cheryl doesn't; either way works for her.

And once she gets the signed and dated PDF document, she'll mail it out certified to Double M.

CAJ

From: Jones, Curry <jones.curry@epa.gov>

Sent: Thursday, July 7, 2022 2:04 PM

To: Johnson, Carol <johnson.carol@epa.gov>; Smalley, Bryant <smalley.bryant@epa.gov>

Subject: RE: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista

Thanks CJ!

Curry Jones, MPH
Chief, Water Resources Section (EN-WR)
US Environmental Protection Agency - Region 6

Phone: (214)665-6793
Fax: (214)665-2191
Email: jones.curry@epa.gov

From: Johnson, Carol <johnson.carol@epa.gov>
Sent: Thursday, July 7, 2022 2:04 PM
To: Smalley, Bryant <smalley.bryant@epa.gov>; Jones, Curry <jones.curry@epa.gov>
Subject: RE: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista

Done and routed back to you, Bryant.

CAJ

From: Smalley, Bryant <smalley.bryant@epa.gov>
Sent: Thursday, July 7, 2022 1:57 PM
To: Jones, Curry <jones.curry@epa.gov>; Johnson, Carol <johnson.carol@epa.gov>
Subject: FW: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista

Okay – thanks for forwarding it back, but since everyone had signed off already, I was clearing the routing list to reload. Problem is, once I deleted myself, it won't allow me to reload the route list. Can one of you go in and add the names from Me down and route it back to me? Just like this:

<input type="checkbox"/>	Send	Send To Name	Init	Date Initialed		Signed By
<input type="checkbox"/>	TO	Carol Johnson	CJ	04/25/2022		
<input type="checkbox"/>	TO	Curry Jones	CJ	04/28/2022		
<input type="checkbox"/>	TO	Carol Johnson	CJ	04/28/2022		
<input type="checkbox"/>	TO	Erin Crockett	EC	04/28/2022		
<input type="checkbox"/>	TO	Carol Johnson	CJ	04/29/2022		
<input type="checkbox"/>	TO	Bryant Smalley	BS	04/27/2022		
<input type="checkbox"/>	TO	Cheryl Seager	CS	04/27/2022		
<input type="checkbox"/>	TO	Carol Johnson	CJ	04/27/2022		
<input type="checkbox"/>	CC	Pamela Eiden-Schroeder	PE	04/27/2022		
<input checked="" type="checkbox"/>	TO	Leah Biggs	LB	04/28/2022		
<input type="checkbox"/>	TO	Carina Neughtin				

7 items selected

Please, Cheryl is waiting on it.

B

From: CAEDeRouting@epa.gov <CAEDeRouting@epa.gov>
Sent: Thursday, July 7, 2022 12:09 PM
To: Smalley, Bryant <smalley.bryant@epa.gov>
Subject: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista

This routing slip has been sent to Bryant Smalley by Carol Johnson

Comments: Per Curry, resending for Cheryl to re-sign and date.

Originator: Carol Johnson

Subject: Double M Properties - Legacy at Sierra Vista

Actions: DD/DDD Signature

Routing Slip: [Click Here](#)

This email may contain material that is confidential, privileged and/or attorney work product and is for the sole use of the intended Recipient. Any review, reliance, or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact [Carol Johnson](#) and delete all copies.

Message

From: McDonald, Scott [mcdonald.scott@epa.gov]
Sent: 7/8/2022 10:18:20 AM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]
Subject: FW: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista
Attachments: Double M Properties-Legacy at Sierra Vista APO Draft Cover Letter_Wcts.pdf; Double M APO 5-18-22_Wcts.pdf

Please read below and see attachments:

From: Smalley, Bryant <smalley.bryant@epa.gov>
Sent: Thursday, July 7, 2022 4:25 PM
To: Vaughn, Lorena <Vaughn.Lorena@epa.gov>; Johnson, Carol <johnson.carol@epa.gov>
Cc: Elder-Schweers, Pam <Elder-Schweers.Pam@epa.gov>; Jones, Curry <jones.curry@epa.gov>; McDonald, Scott <mcdonald.scott@epa.gov>
Subject: RE: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista

I could not reach Curry or Carol – so here it is.

Many thanks Lorena,

B

From: Vaughn, Lorena <Vaughn.Lorena@epa.gov>
Sent: Thursday, July 7, 2022 4:21 PM
To: Smalley, Bryant <smalley.bryant@epa.gov>; Johnson, Carol <johnson.carol@epa.gov>
Cc: Elder-Schweers, Pam <Elder-Schweers.Pam@epa.gov>; Jones, Curry <jones.curry@epa.gov>; McDonald, Scott <mcdonald.scott@epa.gov>
Subject: RE: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista

Ok great

From: Smalley, Bryant <smalley.bryant@epa.gov>
Sent: Thursday, July 07, 2022 4:20 PM
To: Vaughn, Lorena <Vaughn.Lorena@epa.gov>; Johnson, Carol <johnson.carol@epa.gov>
Cc: Elder-Schweers, Pam <Elder-Schweers.Pam@epa.gov>; Jones, Curry <jones.curry@epa.gov>; McDonald, Scott <mcdonald.scott@epa.gov>
Subject: RE: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista

Looks like she just signed it. Trying to reach Curry or Carol to send it to you now.

B

From: Vaughn, Lorena <Vaughn.Lorena@epa.gov>
Sent: Thursday, July 7, 2022 4:04 PM
To: Smalley, Bryant <smalley.bryant@epa.gov>; Johnson, Carol <johnson.carol@epa.gov>
Cc: Elder-Schweers, Pam <Elder-Schweers.Pam@epa.gov>; Jones, Curry <jones.curry@epa.gov>; McDonald, Scott <mcdonald.scott@epa.gov>
Subject: RE: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista

I am not due to come into the office but I will if you need me to mail it out tomorrow.

Do you know if she would have it signed in the morning? So I can come in briefly then to do it?

From: Smalley, Bryant <smalley.bryant@epa.gov>

Sent: Thursday, July 07, 2022 4:01 PM

To: Vaughn, Lorena <Vaughn.Lorena@epa.gov>; Johnson, Carol <johnson.carol@epa.gov>

Cc: Elder-Schweers, Pam <Elder-Schweers.Pam@epa.gov>; Jones, Curry <jones.curry@epa.gov>; McDonald, Scott <mcdonald.scott@epa.gov>

Subject: RE: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista

Lorena – are you working tomorrow?

Not sure Cheryl will get it signed today,

B

From: Vaughn, Lorena <Vaughn.Lorena@epa.gov>

Sent: Thursday, July 7, 2022 3:14 PM

To: Smalley, Bryant <smalley.bryant@epa.gov>; Johnson, Carol <johnson.carol@epa.gov>

Cc: Elder-Schweers, Pam <Elder-Schweers.Pam@epa.gov>; Jones, Curry <jones.curry@epa.gov>; McDonald, Scott <mcdonald.scott@epa.gov>

Subject: RE: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista

It has to start all over again as a brand new one.

I will sign the certificate of service.

I am here until 4:30 p m but I can stay a bit longer if you need me to and make sure it gets out today.

Thank you.

From: Smalley, Bryant <smalley.bryant@epa.gov>

Sent: Thursday, July 07, 2022 3:10 PM

To: Johnson, Carol <johnson.carol@epa.gov>

Cc: Elder-Schweers, Pam <Elder-Schweers.Pam@epa.gov>; Jones, Curry <jones.curry@epa.gov>; Vaughn, Lorena <Vaughn.Lorena@epa.gov>

Subject: RE: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista

Okay – I just sent it to Cheryl and based on the names you put in the routing, asked her to send it back to Curry and cc Pam.

My understanding is Curry will send it to Lorena to sign the Certificate of Service (this should not be done by Cheryl) and she will send it out certified to the Company. Who is going to let the Company know they are going to receive it again (groundhogs day)?

Also, Did we determine if it needs to be re-Public Noticed? If so, Carol will add Lin to the Routing and request that he restart the public notice.

Is this everything??

B

From: Johnson, Carol <johnson.carol@epa.gov>

Sent: Thursday, July 7, 2022 2:11 PM

To: Jones, Curry <jones.curry@epa.gov>; Smalley, Bryant <smalley.bryant@epa.gov>

Cc: Elder-Schweers, Pam <Elder-Schweers.Pam@epa.gov>

Subject: RE: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista

Just spoke with Lorena. She asks if she can be sent an email with the PDF attached after Cheryl signs it, instead of routing it to her in eRouting. Also, she said she's fine with dating and signing the certificate of service if Cheryl doesn't; either way works for her.

And once she gets the signed and dated PDF document, she'll mail it out certified to Double M.

CAJ

From: Jones, Curry <jones.curry@epa.gov>

Sent: Thursday, July 7, 2022 2:04 PM

To: Johnson, Carol <johnson.carol@epa.gov>; Smalley, Bryant <smalley.bryant@epa.gov>

Subject: RE: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista

Thanks CJ!

Curry Jones, MPH

Chief, Water Resources Section (EN-WR)

US Environmental Protection Agency - Region 6

Phone: (214)665-6793

Fax: (214)665-2191

Email: jones.curry@epa.gov

From: Johnson, Carol <johnson.carol@epa.gov>

Sent: Thursday, July 7, 2022 2:04 PM

To: Smalley, Bryant <smalley.bryant@epa.gov>; Jones, Curry <jones.curry@epa.gov>

Subject: RE: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista

Done and routed back to you, Bryant.

CAJ

From: Smalley, Bryant <smalley.bryant@epa.gov>

Sent: Thursday, July 7, 2022 1:57 PM

To: Jones, Curry <jones.curry@epa.gov>; Johnson, Carol <johnson.carol@epa.gov>

Subject: FW: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista

Okay – thanks for forwarding it back, but since everyone had signed off already, I was clearing the routing list to reload. Problem is, once I deleted myself, it won't allow me to reload the route list. Can one of you go in and add the names from Me down and route it back to me? Just like this:

	Send	Send To Name	Ini	Date Initialed	Signed By
<input type="checkbox"/>	TO	Carol Johnson	CJ	04/15/2022	
<input type="checkbox"/>	TO	Curry Jones	CJ	04/16/2022	
<input type="checkbox"/>	TO	Carol Johnson	CJ	05/09/2022	
<input type="checkbox"/>	TO	Ethan Cordonez	EC	05/09/2022	
<input type="checkbox"/>	TO	Carol Johnson	CJ	05/09/2022	
<input type="checkbox"/>	TO	Bryant Smalley	BS	05/27/2022	
<input type="checkbox"/>	TO	Cheryl Seeger	CS	06/11/2022	
<input type="checkbox"/>	TO	Carol Johnson	CJ	06/17/2022	
<input type="checkbox"/>	CC	Patricia Elden Schwartz	PE	06/17/2022	
<input type="checkbox"/>	TO	Leah Kiggyan	LK	06/08/2022	
<input type="checkbox"/>	TO	Lorena Vaughn			

Please, Cheryl is waiting on it.

B

From: CAEDeRouting@epa.gov <CAEDeRouting@epa.gov>

Sent: Thursday, July 7, 2022 12:09 PM

To: Smalley, Bryant <smalley.bryant@epa.gov>

Subject: Enforcement Confidential - Attorney/Client Work Product: Double M Properties - Legacy at Sierra Vista

This routing slip has been sent to Bryant Smalley by Carol Johnson

Per Curry, resending
Comments: for Cheryl to re-sign and date.
Originator: Carol Johnson
Subject: Double M Properties - Legacy at Sierra Vista
Actions: DD/DDD Signature
Routing Slip: [Click Here](#)

This email may contain material that is confidential, privileged and/or attorney work product and is for the sole use of the intended Recipient. Any review, reliance, or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact [Carol Johnson](#) and delete all copies.

Message

From: McDonald, Scott [mcdonald.scott@epa.gov]
Sent: 6/29/2022 11:19:41 PM
To: Vaughn, Lorena [Vaughn.Lorena@epa.gov]
CC: Ordonez, Efren [Ordonez.Efren@epa.gov]
Subject: FW: Answer to Administrative Complaint - Double M Properties
Attachments: CWA-06-2022-1772 Answer to Admin Complaint.pdf

Lorena,

Yes...this administrative case is assigned to Efren. I copied Efren above. Efren submitted a WAR on Double M Properties two-weeks ago. He can provide case status if needed. Thanks –

Scott

From: Vaughn, Lorena <Vaughn.Lorena@epa.gov>
Sent: Wednesday, June 29, 2022 4:40 PM
To: McDonald, Scott <mcdonald.scott@epa.gov>
Subject: FW: Answer to Administrative Complaint

Hi Scott,

Hope you are well.
Do you know who this case belongs too?
Trying to figure out when it got filed.
Thank you.

Lorena

From: Lorraine Hollingsworth <lhollingsworth@domenicilaw.com>
Sent: Wednesday, June 29, 2022 4:26 PM
To: Vaughn, Lorena <Vaughn.Lorena@epa.gov>
Cc: Pete Domenici <pdomenici@domenicilaw.com>
Subject: Answer to Administrative Complaint

Dear Lorena- attached please find the Answer to Administrative Complaint in Docket No. CWA-0602022-1772. I will also be mailing a hardcopy to you.

Regards,
Lorraine

*Lorraine Hollingsworth, Esq.
Domenici Law Firm, PC
320 Gold Ave SW Suite 1000
Albuquerque, NM 87102
505-883-6250*

From: Vaughn, Lorena <Vaughn.Lorena@epa.gov>
Sent: Wednesday, June 29, 2022 7:23 AM
To: Lorraine Hollingsworth <lhollingsworth@domenicilaw.com>
Subject: RE: Question about filing procedures

Good Morning,

You can do both by mail and you can email me the document and I can stamp it.
I will be out of the office starting tomorrow.

Thank you.

Lorena

From: Lorraine Hollingsworth <lhollingsworth@domenicilaw.com>

Sent: Tuesday, June 28, 2022 4:53 PM

To: Vaughn, Lorena <Vaughn.Lorena@epa.gov>

Subject: Question about filing procedures

Dear Ms. Vaughn- I'm an attorney in New Mexico and need to file an answer to an administrative complaint. I have your mailing address for the filing but was wondering if your office does electronic filing. I tried calling your office but was disconnected each time. I can be reached by email or at 1-505-554-0943.

Thank you,
Lorraine Hollingsworth

*Lorraine Hollingsworth, Esq.
Domenici Law Firm, PC
320 Gold Ave SW Suite 1000
Albuquerque, NM 87102
505-883-6250*

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of

DOCKET NO. CWA-06-2022-1772

Double M Properties

Respondent

Proceeding to Assess a Class II
Civil Penalty under Section 309(g)
Of the Clean Water Act

NPDES ID No. NMR1002AG

ANSWER TO ADMINISTRATIVE COMPLAINT

COMES NOW Respondent Double M Properties (Respondent), by and through undersigned counsel of record, and, pursuant to 40 C.F.R. §22.15, hereby submits its Answer to the Administrative Complaint.

I. Statutory Authority

The first paragraph of Section I of the Administrative Complaint (Complaint) sets forth the statutory and regulatory authority of EPA Region 6 to issue the Complaint and identifies the procedural rules that are applicable to this matter. The first paragraph of Section I does not include allegations against the Respondent and does not require a response by the Respondent.

In response to the second paragraph of Section I, Double M Properties, based on its response to the Complaint, denies that it should be ordered to pay the civil penalty set forth in the Complaint.

II. Findings of Fact and Conclusions of Law

1. Respondent admits the allegations contained in Paragraph 1 of the Complaint.
2. Respondent admits the allegations contained in Paragraph 2 of the Complaint.
3. Respondent is without sufficient information to admit or deny the allegations contained in Paragraph 3 of the Complaint.

4. Respondent admits the allegations contained in Paragraph 4 of the Complaint.

5. Paragraph 5 of the Complaint contains a recitation of the requirements of 33 U.S.C. §1311 and does not require a response by the Respondent. Respondent affirmatively states that §1311 speaks for itself and, to the extent that Paragraph 5 is inconsistent with the language of the statute, Respondent denies the allegations therein.

6. Paragraph 6 of the Complaint contains a recitation of the requirements of 33 U.S.C. §1342(a) and does not require a response by the Respondent. Respondent affirmatively states that §1342(a) speaks for itself and, to the extent that Paragraph 6 is inconsistent with the language of the statute, Respondent denies the allegations therein.

7. Paragraph 7 of the Complaint contains a recitation of the requirements of 33 U.S.C. §1342(p) and does not require a response by the Respondent. Respondent affirmatively states that §1342(p) speaks for itself and, to the extent that Paragraph 7 is inconsistent with the language of the statute, Respondent denies the allegations therein.

8. Paragraph 8 of the Complaint contains a recitation of the requirements of 40 C.F.R. §122.26(b)(14)(x) and does not require a response by the Respondent. Respondent affirmatively states that 40 C.F.R. §122.26(b)(14)(x) speaks for itself and, to the extent that Paragraph 8 is inconsistent with the language of the regulation, Respondent denies the allegations therein.

9. Respondent admits the allegations contained in Paragraph 9 of the Complaint.

10. In response to Paragraph 10 of the Complaint, Respondent admits that it applied for and was issued coverage under the EPA Construction General Permit and was assigned NPDES Permit No. NMR1002AG by the EPA electronic Notice of Intent (NOI) Center on August 1, 2019 for the site known as Legacy at Sierra Vista under Section 402 of the Act, 33

U.S.C. §1342. Respondent denies that the Permit was only for 57 acres. Once the Permit was issued, the Respondent was required to maintain and contain storm water runoff for the entire facility. The Respondent applied the requirements of the Permit to the entire facility. Respondent affirmatively states that the permit speaks for itself and to the extent that the allegations in Paragraph 10 are inconsistent with the permit and its intended coverage, Respondent denies those allegations.

11. In response to Paragraph 11 of the Complaint, Respondent admits that 200 acres were cleared and graded. The work was completed in compliance with the masterplan approved by the Village of Los Lunas and in compliance with the issued NPDES Permit. Respondent denies the remaining allegations in Paragraph 11. Exhibit 1, attached hereto, Isaacson & Arfman, Inc. Engineer's Report.

12. In response to Paragraph 12 of the Complaint, Respondent denies that it did not have coverage for the entire facility from April 3, 2020 to December 23, 2020. Once the Permit was issued, the Respondent was required to maintain and contain storm water runoff for the entire facility, which the Respondent did. Respondent admits that the Permit was updated on December 24, 2020. Respondent denies the remaining allegations in Paragraph 12. Exhibit 1, attached hereto.

13. Respondent to Paragraph 13 of the Complaint, Respondent denies that there were five rain events for the area. Information from the Via de Oro USGS Rain Gauge, which is the appropriate gauge based on proximity to the site, indicates that during the relevant time period there were only two storm events, on July 25, 2020 and the other on September 9, 2020. The two rain events did not produce any substantial amounts of storm water runoff and/or standing water in any of the onsite retention ponds. Respondent affirmatively states that, during the

relevant time period, there were no storm water discharges from the site. Exhibit 1, attached hereto.

14. Respondent denies the allegations contained in Paragraph 14 of the Complaint.

15. Respondent is without sufficient information to admit or deny the allegations contained in Paragraph 15 of the Complaint.

16. Respondent is without sufficient information to admit or deny the allegations contained in Paragraph 16 of the Complaint.

III. Proposed Penalty

17. In response to Paragraph 17 of the Complaint, Respondent denies that it should be assessed the proposed penalty.

18. In response to Paragraph 18 of the Complaint, Respondent denies that it should be assessed the proposed penalty based on the statutory factors specified in 33 U.S.C. §1319(g)(3). The only alleged violation is the lack of a permit from April 3, 2020 to December 23, 2020. Pursuant to the “Revised Expedited Settlement Agreement Program Pilot for Construction Stormwater,” EPA, September 4, 2019, the penalty for failure to obtain a permit is \$600.00 per event. Respondent acknowledges that the administrative procedures specified in 40 C.F.R. Part 22, Subpart I, shall apply to this matter.

IV. Failure to File an Answer

19. Paragraphs 19 to 24 set forth procedural requirements for answering the Complaint and do not require a response from the Respondent.

V. Notice of Opportunity to Request a Hearing

20. In response to Paragraphs 25 to 27, Respondent requests that a hearing be held pursuant to 33 U.S.C. §1319(g) and 40 C.F.R. Part 22.

VI. Settlement

21. Paragraphs 28 to 30 do not require a response from the Respondent.

VII. Response in Opposition to Proposed Penalty

1. The controls required by NPDES Permit No. NMR1002AG were in place and provided protection for the entire facility from April 3, 2020 to December 4, 2020.

2. The only alleged violation is the lack of a permit from April 3, 2020 to December 23, 2020. As stated above, Respondent denies that it did not have Permit coverage during the relevant time period. Additionally, pursuant to the “Revised Expedited Settlement Agreement Program Pilot for Construction Stormwater,” EPA, September 4, 2019, the penalty for failure to obtain a permit is \$600.00 per event.

3. There is no evidence of sediment discharge or unpermitted storm water discharges from the facility during the relevant time period. In addition to the storm water discharge requirements set forth in the Permit, the masterplan for the subdivision approved by the Village of Los Lunas required the Respondent to retain 100% of the developed storm water volumes for all rainfall events up to an including the 100-year, 24-hour storm. As shown in the Engineer’s Report, the required protections were put in place as part of the grading and development of the property. Exhibit 1.

4. The distance from the facility to the Rio Grande, which the Complaint identifies as a “water of the United States,” is significant and the path to the Rio Grande includes, as stated in Paragraph 3 of the Complaint, “an unnamed ephemeral stream, thence to an unnamed stream river, thence to the Hubbell Channel, thence to the Rio Grande.” The potential impact to the Rio Grande is low and there are no allegations or evidence that there were any unpermitted storm water discharges from the facility that impacted the Rio Grande during the relevant time period.

5. There are no allegations or evidence of significant harm to human health or the environment during the relevant time period.
6. To the extent that the facility may have benefited economically from the alleged violation, which Respondent denies, any such benefits were minimal.
7. There is no history of prior violations by the Respondent at the facility.
8. There are no allegations or evidence of non-allowable, non-stormwater discharges from the facility.
9. Any culpability on the part of the Respondent is minimal. During the relevant time period, the requirements of the Permit and the masterplan approved by the Village of Los Lunas were in place for the entire site. Exhibit 1.
10. Assessing the proposed Class II penalty, pursuant to 33 U.S.C. §1319(g)(2)(B), is not justified based on the factors to be considered, as identified in 33 U.S.C. §1319(g)(3) and is inconsistent with the facts and with the penalty for failure to have a permit identified in the “Revised Expedited Settlement Agreement Program Pilot for Construction Stormwater.”

WHEREFORE, the Respondent requests a hearing on this matter and requests that the Administrative Complaint be dismissed in its entirety.

Respectfully submitted,

DOMENICI LAW FIRM

Pete Domenici

Pete Domenici

320 Gold Ave SW Suite 1000

Albuquerque, New Mexico 87102

505-883-6250

pdomenici@domenicilaw.com

ENGINEER'S REPORT

June 28, 2022

Project: **Sierra Vista Masterplan and Subdivisions**

Subject: **Grading & Drainage History and Improvements**

This report was prepared to state the required drainage criteria, temporary and permanent improvements, and their corresponding timelines and to document that storm waters were not allowed and did not discharge from the subject property between April 2020 and December 2020. Isaacson & Arfman, Inc. is the engineer-of-record for all of the subdivisions being developed within the Area Plan and conducted bi-weekly meetings with the owner, contractors and other consultants and the testing lab.

Sierra Vista Area Plan: The Area Plan (masterplan) was processed through the Village of Los Lunas and received approval from the Village Council on September 6, 2018, as Village of Los Lunas Resolution 18-14. The Village storm water drainage regulations required that all developments west of I-25 would be required to retain 100% of the developed storm water volumes for all rainfall events up to and including the 100-yr./24-hr. storm.

Mass Grading:

March - October, 2020: A mass grading plan was developed and submitted to the Village of Los Lunas as part of the Sierra Vista Preliminary Plat creating the bulk tracts comprising the entire development. The limits of the plan are identified on the attached Exhibit A entitled, "EXISTING CONDITIONS, PRE 2020". The exhibit shows the pre grading site topography as provide by the grading contractor. Grading operations were delayed and started March 2, 2020. The exhibit indicates the existence of several onsite retention ponds and the Village owned and maintained retention ponds along the south boundary of the development. The Village ponds were constructed to intercept a vast majority of the offsite storm waters that historically entered onto the site. Storm water runoff from the undeveloped site were conveyed overland as sheet flows where they eventually were accepted into the NMDOT right-of-way of NM-6. The existing drainage swales along the NM-6 released the storm waters via storm water culverts under NM-6 and to the north at the historical drainage courses.

Grading operations were at 95% in October and the contractor, Franklin's Earthmoving, Inc. (FEI) had a smaller crew onsite for the next 6 week to perform minor grading and touch -up operations.

Legacy, Unit 1 – 3 Subdivision Development:

April, 2020: Exhibit B shows the limits of the first subdivision, Legacy Unit 1 (Tract B). A Pre-Con meeting was held at the office of the Public Works Director on December 19, 2019, for the three phases. The grading contractor, FEI focused on the Legacy grading in concert with their mass grading operations. Legacy 1-3 was constructed and had a drainage solution of three permanent ponds that accepted the storm water volume from the 100-yr. storm event.

Tracts A, C, D, E, & F:

Tract C situated adjacent to the northeast boundary of Legacy, Unit 1 is a 1.5 ac. undeveloped commercial tract that has the overland storm waters captured by an interim pond along the NM-6 frontage. Tracts A & D along NM-6 were stabilized and interim retention ponds constructed to accept the 100-yr storm water volumes. All undeveloped and developed storm waters are being held on site and are allowed to percolate into the ground. The sandy material has been observed to have a percolation rate of approximately 6" per hour. The ponds are a maximum of 3' deep and will hold surface storm water for approximately 6 hours during the percolation process.

There were two storm events, one on July 25, 2020, and the other on Sept. 9, 2020, as registered on the Via de Oro USGS Rain Gage. These two events did not produce any substantial amounts of storm water runoff and/or standing water in any of the onsite retention ponds.

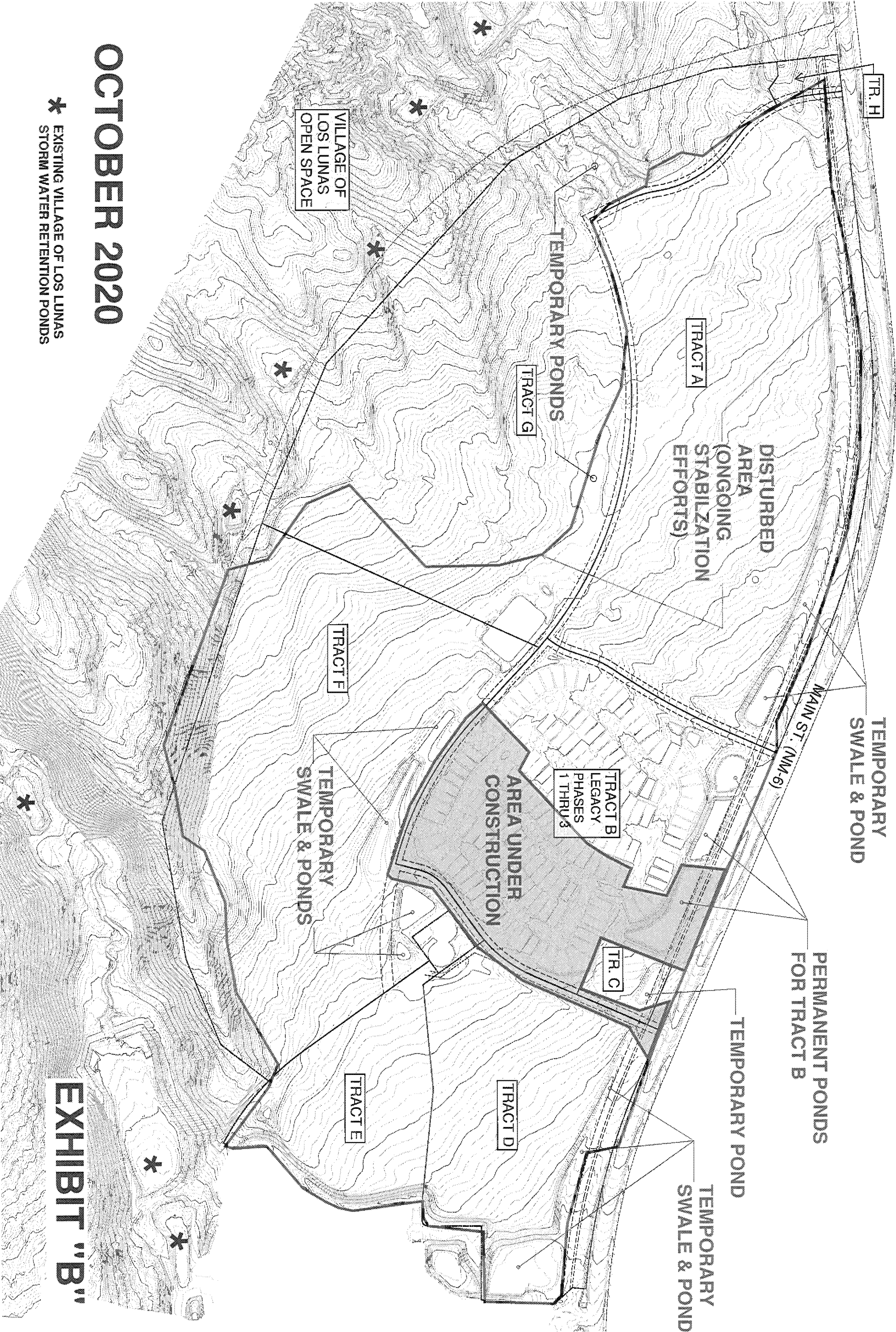
E2RC SWPPP Maintenance:

E2RC had the maintenance responsibility and maintained the property as shown on their Maintenance Log for Legacy at Sierra Vista. The log started on March 2, 2020, and continued through February 2021. During the period from April, 2020 through December 2020, there were six log entries describing their efforts in installing and maintaining the silt fencing and construction entrance to Legacy.

Conclusion:

Based on the rainfall data available for the subject plan area and the observations of the site by Isaacson & Arfman, Inc. after the rainfall events, we have concluded that all of the project land area had the storm waters captured by the series of storm water retention ponds with the exception of the small areas at the site entrances where very minor flows were allowed to discharge into the NMDOT south bar ditch along Main St. (NM-6).

EXHIBIT "A"



OCTOBER 2020

* EXISTING VILLAGE OF LOS LUNAS
STORM WATER RETENTION PONDS

EXHIBIT "B"

Message

From: McDonald, Scott [mcdonald.scott@epa.gov]
Sent: 7/7/2022 7:57:16 PM
To: Vaughn, Lorena [Vaughn.Lorena@epa.gov]; Ordonez, Efren [Ordonez.Efren@epa.gov]
Subject: FW: Document - Double M Properties
Attachments: Scanned_from_8_8325_LX_CX825_207-07-2022-101748.pdf

Thanks Lorena! Efren is coordinating with our Construction Stormwater Program. He knows that we must issue the APO and then request that the Respondent refile an Answer at a later date, etc.

Scott

From: Vaughn, Lorena <Vaughn.Lorena@epa.gov>
Sent: Thursday, July 7, 2022 10:56 AM
To: McDonald, Scott <mcdonald.scott@epa.gov>; Ordonez, Efren <Ordonez.Efren@epa.gov>
Subject: Document

Good Morning,

Here is the answer from the company.

From: 8 8325 LX CX825 2@epa.gov <8 8325 LX CX825 2@epa.gov>
Sent: Thursday, July 07, 2022 10:18 AM
To: Vaughn, Lorena <Vaughn.Lorena@epa.gov>
Subject:

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of

DOCKET NO. CWA-06-2022-1772

Double M Properties

Respondent

Proceeding to Assess a Class II
Civil Penalty under Section 309(g)
Of the Clean Water Act

NPDES ID No. NMR1002AG

ANSWER TO ADMINISTRATIVE COMPLAINT

COMES NOW Respondent Double M Properties (Respondent), by and through undersigned counsel of record, and, pursuant to 40 C.F.R. §22.15, hereby submits its Answer to the Administrative Complaint.

I. Statutory Authority

The first paragraph of Section I of the Administrative Complaint (Complaint) sets forth the statutory and regulatory authority of EPA Region 6 to issue the Complaint and identifies the procedural rules that are applicable to this matter. The first paragraph of Section I does not include allegations against the Respondent and does not require a response by the Respondent.

In response to the second paragraph of Section I, Double M Properties, based on its response to the Complaint, denies that it should be ordered to pay the civil penalty set forth in the Complaint.

II. Findings of Fact and Conclusions of Law

1. Respondent admits the allegations contained in Paragraph 1 of the Complaint.
2. Respondent admits the allegations contained in Paragraph 2 of the Complaint.
3. Respondent is without sufficient information to admit or deny the allegations contained in Paragraph 3 of the Complaint.

4. Respondent admits the allegations contained in Paragraph 4 of the Complaint.

5. Paragraph 5 of the Complaint contains a recitation of the requirements of 33 U.S.C. §1311 and does not require a response by the Respondent. Respondent affirmatively states that §1311 speaks for itself and, to the extent that Paragraph 5 is inconsistent with the language of the statute, Respondent denies the allegations therein.

6. Paragraph 6 of the Complaint contains a recitation of the requirements of 33 U.S.C. §1342(a) and does not require a response by the Respondent. Respondent affirmatively states that §1342(a) speaks for itself and, to the extent that Paragraph 6 is inconsistent with the language of the statute, Respondent denies the allegations therein.

7. Paragraph 7 of the Complaint contains a recitation of the requirements of 33 U.S.C. §1342(p) and does not require a response by the Respondent. Respondent affirmatively states that §1342(p) speaks for itself and, to the extent that Paragraph 7 is inconsistent with the language of the statute, Respondent denies the allegations therein.

8. Paragraph 8 of the Complaint contains a recitation of the requirements of 40 C.F.R. §122.26(b)(14)(x) and does not require a response by the Respondent. Respondent affirmatively states that 40 C.F.R. §122.26(b)(14)(x) speaks for itself and, to the extent that Paragraph 8 is inconsistent with the language of the regulation, Respondent denies the allegations therein.

9. Respondent admits the allegations contained in Paragraph 9 of the Complaint.

10. In response to Paragraph 10 of the Complaint, Respondent admits that it applied for and was issued coverage under the EPA Construction General Permit and was assigned NPDES Permit No. NMR1002AG by the EPA electronic Notice of Intent (NOI) Center on August 1, 2019 for the site known as Legacy at Sierra Vista under Section 402 of the Act, 33

U.S.C. §1342. Respondent denies that the Permit was only for 57 acres. Once the Permit was issued, the Respondent was required to maintain and contain storm water runoff for the entire facility. The Respondent applied the requirements of the Permit to the entire facility. Respondent affirmatively states that the permit speaks for itself and to the extent that the allegations in Paragraph 10 are inconsistent with the permit and its intended coverage, Respondent denies those allegations.

11. In response to Paragraph 11 of the Complaint, Respondent admits that 200 acres were cleared and graded. The work was completed in compliance with the masterplan approved by the Village of Los Lunas and in compliance with the issued NPDES Permit. Respondent denies the remaining allegations in Paragraph 11. Exhibit 1, attached hereto, Isaacson & Arfman, Inc. Engineer's Report.

12. In response to Paragraph 12 of the Complaint, Respondent denies that it did not have coverage for the entire facility from April 3, 2020 to December 23, 2020. Once the Permit was issued, the Respondent was required to maintain and contain storm water runoff for the entire facility, which the Respondent did. Respondent admits that the Permit was updated on December 24, 2020. Respondent denies the remaining allegations in Paragraph 12. Exhibit 1, attached hereto.

13. Respondent to Paragraph 13 of the Complaint, Respondent denies that there were five rain events for the area. Information from the Via de Oro USGS Rain Gauge, which is the appropriate gauge based on proximity to the site, indicates that during the relevant time period there were only two storm events, on July 25, 2020 and the other on September 9, 2020. The two rain events did not produce any substantial amounts of storm water runoff and/or standing water in any of the onsite retention ponds. Respondent affirmatively states that, during the

relevant time period, there were no storm water discharges from the site. Exhibit 1, attached hereto.

14. Respondent denies the allegations contained in Paragraph 14 of the Complaint.

15. Respondent is without sufficient information to admit or deny the allegations contained in Paragraph 15 of the Complaint.

16. Respondent is without sufficient information to admit or deny the allegations contained in Paragraph 16 of the Complaint.

III. Proposed Penalty

17. In response to Paragraph 17 of the Complaint, Respondent denies that it should be assessed the proposed penalty.

18. In response to Paragraph 18 of the Complaint, Respondent denies that it should be assessed the proposed penalty based on the statutory factors specified in 33 U.S.C. §1319(g)(3). The only alleged violation is the lack of a permit from April 3, 2020 to December 23, 2020. Pursuant to the “Revised Expedited Settlement Agreement Program Pilot for Construction Stormwater,” EPA, September 4, 2019, the penalty for failure to obtain a permit is \$600.00 per event. Respondent acknowledges that the administrative procedures specified in 40 C.F.R. Part 22, Subpart I, shall apply to this matter.

IV. Failure to File an Answer

19. Paragraphs 19 to 24 set forth procedural requirements for answering the Complaint and do not require a response from the Respondent.

V. Notice of Opportunity to Request a Hearing

20. In response to Paragraphs 25 to 27, Respondent requests that a hearing be held pursuant to 33 U.S.C. §1319(g) and 40 C.F.R. Part 22.

VI. Settlement

21. Paragraphs 28 to 30 do not require a response from the Respondent.

VII. Response in Opposition to Proposed Penalty

1. The controls required by NPDES Permit No. NMR1002AG were in place and provided protection for the entire facility from April 3, 2020 to December 4, 2020.
2. The only alleged violation is the lack of a permit from April 3, 2020 to December 23, 2020. As stated above, Respondent denies that it did not have Permit coverage during the relevant time period. Additionally, pursuant to the "Revised Expedited Settlement Agreement Program Pilot for Construction Stormwater," EPA, September 4, 2019, the penalty for failure to obtain a permit is \$600.00 per event.
3. There is no evidence of sediment discharge or unpermitted storm water discharges from the facility during the relevant time period. In addition to the storm water discharge requirements set forth in the Permit, the masterplan for the subdivision approved by the Village of Los Lunas required the Respondent to retain 100% of the developed storm water volumes for all rainfall events up to and including the 100-year, 24-hour storm. As shown in the Engineer's Report, the required protections were put in place as part of the grading and development of the property. Exhibit 1.
4. The distance from the facility to the Rio Grande, which the Complaint identifies as a "water of the United States," is significant and the path to the Rio Grande includes, as stated in Paragraph 3 of the Complaint, "an unnamed ephemeral stream, thence to an unnamed stream river, thence to the Hubbell Channel, thence to the Rio Grande." The potential impact to the Rio Grande is low and there are no allegations or evidence that there were any unpermitted storm water discharges from the facility that impacted the Rio Grande during the relevant time period.

5. There are no allegations or evidence of significant harm to human health or the environment during the relevant time period.

6. To the extent that the facility may have benefited economically from the alleged violation, which Respondent denies, any such benefits were minimal.

7. There is no history of prior violations by the Respondent at the facility.

8. There are no allegations or evidence of non-allowable, non-stormwater discharges from the facility.

9. Any culpability on the part of the Respondent is minimal. During the relevant time period, the requirements of the Permit and the masterplan approved by the Village of Los Lunas were in place for the entire site. Exhibit 1.

10. Assessing the proposed Class II penalty, pursuant to 33 U.S.C. §1319(g)(2)(B), is not justified based on the factors to be considered, as identified in 33 U.S.C. §1319(g)(3) and is inconsistent with the facts and with the penalty for failure to have a permit identified in the "Revised Expedited Settlement Agreement Program Pilot for Construction Stormwater."

WHEREFORE, the Respondent requests a hearing on this matter and requests that the Administrative Complaint be dismissed in its entirety.

Respectfully submitted,

DOMENICI LAW FIRM

Pete Domenici

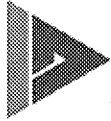
Pete Domenici

320 Gold Ave SW Suite 1000

Albuquerque, New Mexico 87102

505-883-6250

pdomenici@domenicilaw.com



ENGINEER'S REPORT

June 28, 2022

Project: Sierra Vista Masterplan and Subdivisions

Subject: Grading & Drainage History and Improvements

This report was prepared to state the required drainage criteria, temporary and permanent improvements, and their corresponding timelines and to document that storm waters were not allowed and did not discharge from the subject property between April 2020 and December 2020. Isaacson & Arfman, Inc. is the engineer-of-record for all of the subdivisions being developed within the Area Plan and conducted bi-weekly meetings with the owner, contractors and other consultants and the testing lab.

Sierra Vista Area Plan: The Area Plan (masterplan) was processed through the Village of Los Lunas and received approval from the Village Council on September 6, 2018, as Village of Los Lunas Resolution 18-14. The Village storm water drainage regulations required that all developments west of I-25 would be required to retain 100% of the developed storm water volumes for all rainfall events up to and including the 100-yr./24-hr. storm.

Mass Grading:

March - October, 2020: A mass grading plan was developed and submitted to the Village of Los Lunas as part of the Sierra Vista Preliminary Plat creating the bulk tracts comprising the entire development. The limits of the plan are identified on the attached Exhibit A entitled, "EXISTING CONDITIONS, PRE 2020". The exhibit shows the pre grading site topography as provide by the grading contractor. Grading operations were delayed and started March 2, 2020. The exhibit indicates the existence of several onsite retention ponds and the Village owned and maintained retention ponds along the south boundary of the development. The Village ponds were constructed to intercept a vast majority of the offsite storm waters that historically entered onto the site. Storm water runoff from the undeveloped site were conveyed overland as sheet flows where they eventually were accepted into the NMDOT right-of-way of NM-6. The existing drainage swales along the NM-6 released the storm waters via storm water culverts under NM-6 and to the north at the historical drainage courses.

Grading operations were at 95% in October and the contractor, Franklin's Earthmoving, Inc. (FEI) had a smaller crew onsite for the next 6 week to perform minor grading and touch -up operations.

Legacy, Unit 1 – 3 Subdivision Development:

April, 2020: Exhibit B shows the limits of the first subdivision, Legacy Unit 1 (Tract B). A Pre-Con meeting was held at the office of the Public Works Director on December 19, 2019, for the three phases. The grading contractor, FEI focused on the Legacy grading in concert with their mass grading operations. Legacy 1-3 was constructed and had a drainage solution of three permanent ponds that accepted the storm water volume from the 100-yr. storm event.

Tracts A, C, D, E, & F:

Tract C situated adjacent to the northeast boundary of Legacy, Unit 1 is a 1.5 ac. undeveloped commercial tract that has the overland storm waters captured by an interim pond along the NM-6 frontage. Tracts A & D along NM-6 were stabilized and interim retention ponds constructed to accept the 100-yr storm water volumes. All undeveloped and developed storm waters are being held on site and are allowed to percolate into the ground. The sandy material has been observed to have a percolation rate of approximately 6" per hour. The ponds are a maximum of 3' deep and will hold surface storm water for approximately 6 hours during the percolation process.

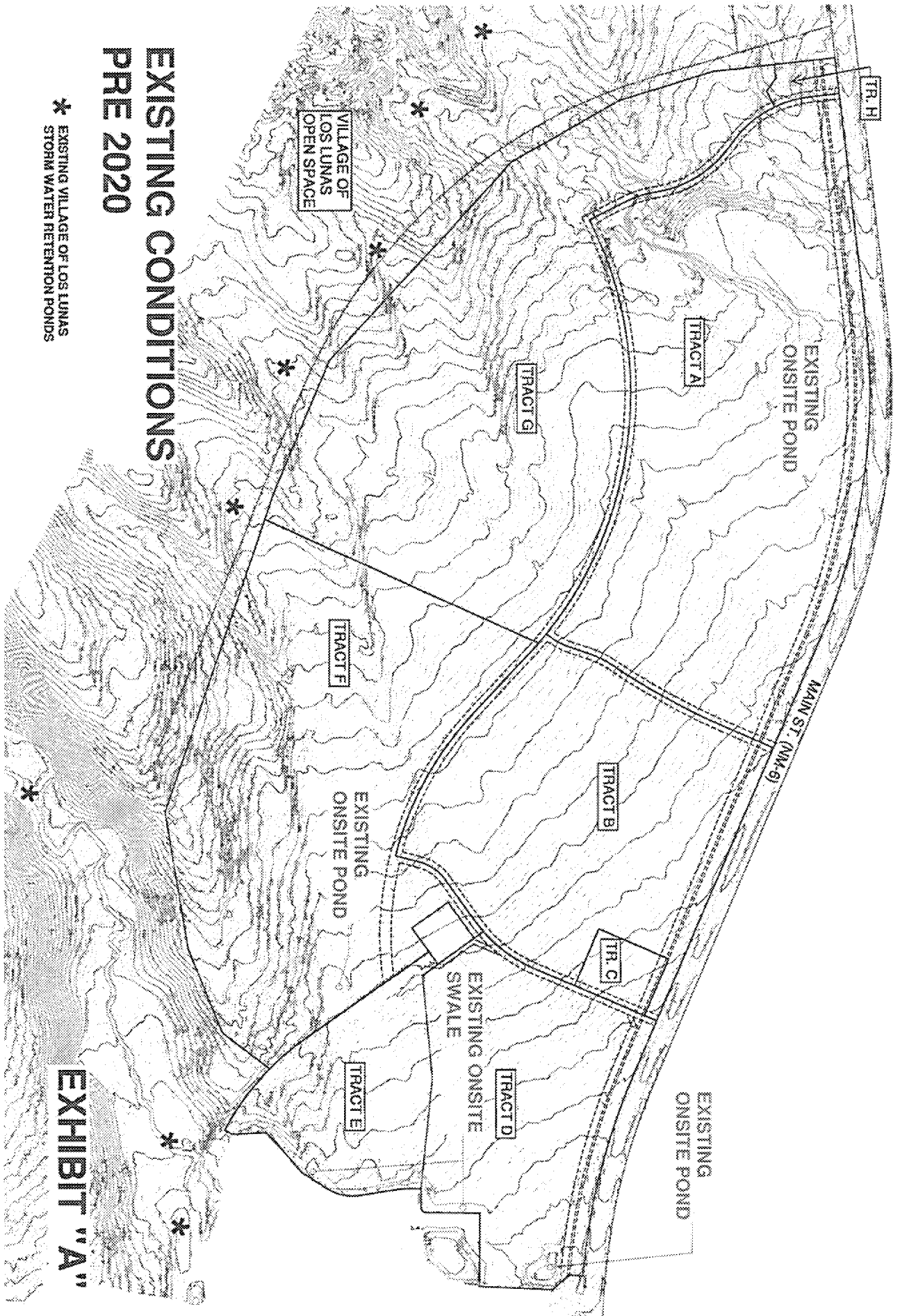
There were two storm events, one on July 25, 2020, and the other on Sept. 9, 2020, as registered on the Via de Oro USGS Rain Gage. These two events did not produce any substantial amounts of storm water runoff and/or standing water in any of the onsite retention ponds.

E2RC SWPPP Maintenance:

E2RC had the maintenance responsibility and maintained the property as shown on their Maintenance Log for Legacy at Sierra Vista. The log started on March 2, 2020, and continued through February 2021. During the period from April, 2020 through December 2020, there were six log entries describing their efforts in installing and maintaining the silt fencing and construction entrance to Legacy.

Conclusion:

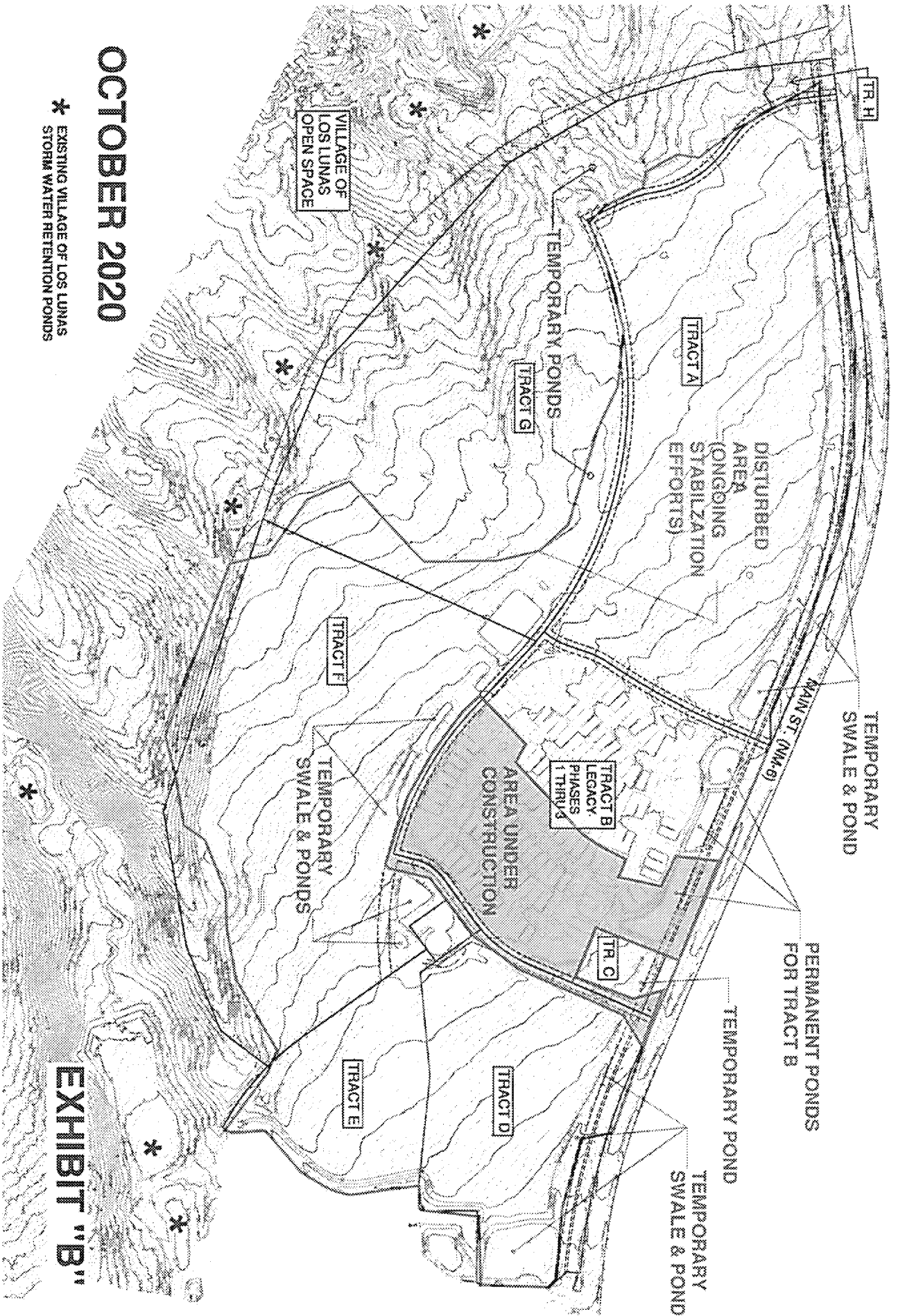
Based on the rainfall data available for the subject plan area and the observations of the site by Isaacson & Arfman, Inc. after the rainfall events, we have concluded that all of the project land area had the storm waters captured by the series of storm water retention ponds with the exception of the small areas at the site entrances where very minor flows were allowed to discharge into the NMDOT south bar ditch along Main St. (NM-6).



EXISTING CONDITIONS PRE 2020

* EXISTING VILLAGE OF LOS LUNAS
STORM WATER RETENTION PONDS

EXHIBIT "A"



OCTOBER 2020

* EXISTING VILLAGE OF LOS LUNAS
STORM WATER RETENTION PONDS

EXHIBIT "B"

Message

From: Angeles, Mary [Angeles.Mary@epa.gov]
Sent: 8/15/2022 2:10:12 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]; pdomenici@domenicilaw.com
Subject: Orders in Double M Properties, Docket No. CWA-06-2022-1772
Attachments: 2022-08-15 - double m properties - order of designation - issued.pdf; 2022-08-15 - double m properties - prehearing order - issued.pdf

Good Morning. Please find attached two orders in the above case proceeding. The order of designation is being issued by Susan L. Biro, Chief Administrative Law Judge. The prehearing order is being issued by Christine D. Coughlin, Administrative Law Judge. Kindly confirm by replying upon your receipt of the documents. Let me know if you have any questions. Hard copies will follow by regular USPS mail. Thank you.

*Best,
Mary Angeles (she/ella)
Office of Administrative Law Judges*



Be kind to the environment.
Please do not print this email unless necessary.

Standard USPS Mail:
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Mail Code 1900R
Washington, DC 20460
Direct: 202.564.6281
Gen: 202.564.6255
Cell: 202-809-6807 (Call/Text)
Email: angeles.mary@epa.gov
Electronic Filing: https://yosemite.epa.gov/oa/eab/eab-alj_upload.nsf

Overnight USPS/FedEx/UPS:
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Ronald Reagan Building (MC 1900R)
1300 Pennsylvania Ave., N.W.
Suite M1200
Washington, DC 20004



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:)	
)	
Double M Properties,)	Docket No. CWA-06-2022-1772
)	
Respondent.)	

ORDER OF DESIGNATION

Administrative Law Judge Christine Donelian Coughlin, U.S. Environmental Protection Agency (“EPA”), Washington, D.C., is hereby designated as the Administrative Law Judge to preside in this proceeding under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Rules of Practice”), 40 C.F.R. Part 22.

Parties shall participate in this matter through the submission of documents in the manner described below.¹ Future orders will instruct the parties on what documents to submit.

Filing: As provided in 40 C.F.R. § 22.5(a), the original and one copy of each document intended to be part of the record of this proceeding shall be filed with the Headquarters Hearing Clerk.² Electronic filing is strongly encouraged. To file a document electronically, the document shall be submitted to the Headquarters Hearing Clerk using the OALJ E-Filing System, a web-based tool that can be accessed by visiting the OALJ’s website at www.epa.gov/alj.³ A document filed electronically is deemed to constitute both the original and one copy of the document.

Any party seeking to file a document electronically must first register to use the OALJ E-Filing System. Registration is not automated. There may be a delay of one to two business days between the time a party applies for registration and the time that party will be able to upload documents into the system.

¹ The parties are advised to visit the website for this Tribunal, EPA’s Office of Administrative Law Judges (“OALJ”), at <https://www.epa.gov/alj/filing-and-service-during-covid-19> for the most current guidance on filing and service procedures in light of the ongoing COVID-19 pandemic.

² Pursuant to the Headquarters Hearing Clerk Pilot Project, the OALJ and Headquarters Hearing Clerk shall keep the official record and be the proper filing location for all contested cases in which an answer was filed after May 1, 2012. For more information, see the OALJ’s website at www.epa.gov/alj.

³ More information about electronic filing may be found in the Standing Order Authorizing Electronic Filing in Proceedings before the Office of Administrative Law Judges, available on the OALJ’s website at <https://www.epa.gov/sites/production/files/2014-10/documents/alj-standing-order-efiling.pdf>.

A document submitted to the OALJ E-Filing System is considered “filed” at the time and date of electronic reception, as recorded by the OALJ E-Filing System immediately upon reception. To be considered timely, documents submitted through the OALJ E-Filing System must be received by 11:59 p.m. Eastern Time on the date the document is due, unless another time is specified by the presiding judge. Within an hour of a document being electronically filed, the OALJ E-Filing System will generate an electronic receipt of the submission that will be sent by email to both the party submitting the document and the Headquarters Hearing Clerk.⁴

The OALJ E-Filing System will accept any type of digital file, but the file size is limited to 70 megabytes.⁵ Electronically filed textual documents must be in Portable Document Format (“PDF”).

Alternatively, if a party is unable to file a document utilizing the OALJ E-Filing System, e.g., the party lacks access to a computer, the party may file the document by U.S. mail or facsimile.⁶ U.S. mail is currently being delivered to this Tribunal at an offsite location on a weekly basis only, and documents sent by facsimile will also be received offsite. To file a document using U.S. mail, the document shall be sent to the following mailing address:

Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Ave., NW
Mail Code 1900R
Washington, DC 20460

Facsimile may be used to file a document if it is fewer than 20 pages in length. To file a document using facsimile, the document shall be sent to this Tribunal’s offsite location at (916)

⁴ The emailed electronic receipt will be the filing party’s only proof that the OALJ received the submitted document. The absence or presence of a document on the OALJ’s E-Docket Database webpage, available at https://yosemite.epa.gov/oarm/alj/alj_web_docket.nsf, or on the Agency’s Administrative Enforcement Dockets webpage, available at <https://yosemite.epa.gov/oa/rhc/epaadmin.nsf>, is not proof that the document was or was not received. If the filing party does not receive an electronic receipt within one hour after submitting the document through the OALJ E-Filing System, the Headquarters Hearing Clerk may be able to confirm receipt of the document but not earlier than one hour after the document was submitted.

⁵ If a party’s multimedia file exceeds 70 megabytes, the party may save the file on a compact disc and send it by U.S. mail to the mailing address identified in this Order, or the party may contact the Headquarters Hearing Clerk at (202) 564-6281 for instructions on alternative electronic filing methods.

⁶ Because of the ongoing COVID-19 pandemic, this Tribunal’s ability to receive filings and correspondence by U.S. mail and facsimile is limited. If a party is without access to a computer and must file documents by U.S. mail or facsimile, the party shall notify the Headquarters Hearing Clerk *every time* it files a document in such a manner by calling the Headquarters Hearing Clerk at (202) 564-6281.

At this time, the Tribunal is not able to accept filings or correspondence by courier or commercial delivery service, such as UPS, FedEx, and DHL. Likewise, the physical office of the OALJ is not currently accessible to the public, and the Tribunal is not able to receive documents by personal delivery. *See Order Urging Electronic Service and Filing* (April 10, 2020), available at https://www.epa.gov/sites/production/files/2020-05/documents/2020-04-10_-_order_urgening_electronic_service_and_filing.pdf.

550-9639. A document submitted by U.S. mail or facsimile is considered “filed” when the Headquarters Hearing Clerk physically receives it, as reflected by the inked date stamp physically applied by the Headquarters Hearing Clerk to the paper copy of the document.

Regardless of the method of filing, all filed documents must be signed in accordance with 40 C.F.R. § 22.5(c) and must contain the contact name, telephone number, mailing address, and email address of the filing party or its authorized representative.

Service: A copy of each document filed in this proceeding shall be “served” by the filing party on the presiding judge and on all other parties. 40 C.F.R. § 22.5(b). While the Rules of Practice ordinarily allow documents to be served by U.S. mail, commercial delivery service, or personal delivery, as well as by facsimile or email if service by those electronic means is consented to in writing, 40 C.F.R. § 22.5(b)(2), this Tribunal strongly encourages parties to serve all documents on opposing parties by electronic means only, *see* Order Urging Electronic Service and Filing (April 10, 2020), *available at* https://www.epa.gov/sites/production/files/2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf. Documents filed electronically through the OALJ E-Filing System are deemed to have also been served electronically on the presiding judge. To serve a document on the presiding judge by U.S. mail or facsimile, the mailing address or facsimile number listed above shall be used. Service will be considered complete upon mailing or upon electronic transmission. 40 C.F.R. § 22.7(c).

Certificate of Service: Every filed document must show how and when the document was filed with the Headquarters Hearing Clerk and how and when the document was served on the presiding judge and each party. This showing may be made through a written statement or Certificate of Service, an example of which is attached to this Order. 40 C.F.R. § 22.5(a)(3).

Privacy Act Statement; Notice of Disclosure of Confidential and Personal Information; Waiver of Confidentiality and Consent to Public Disclosure: All information filed with the OALJ becomes part of the official case record, which is made publicly available. Thus, the parties are hereby advised not to file any Confidential Business Information (“CBI”) or Personally Identifiable Information (“PII”) pertaining to any person. This may include information that, if disclosed to the public, would constitute an unwarranted invasion of personal privacy, such as Social Security numbers, medical records, and personal financial information.

Where filing of a document containing such information is necessary, the parties are hereby advised to redact (i.e., remove or obscure) the CBI or PII present in the document filed. If the filing party wishes for the presiding judge to view and consider the CBI or PII in making a ruling rendering a decision, the filing party *must* follow the procedures specified on the OALJ’s website at www.epa.gov/alj and in 40 C.F.R. Part 2 to protect the given information against public disclosure. *To the extent that any person fails to adhere to those procedures and files any unredacted CBI or PII pertaining to themselves or their client, that person thereby waives any claims to confidentiality and consents to public disclosure by EPA, including posting on the Internet, of all such information.*

SO ORDERED.

A handwritten signature in black ink, appearing to read 'S. Biro', is written over a horizontal line.

Susan L. Biro
Chief Administrative Law Judge

Dated: August 15, 2022
Washington, D.C.

In the Matter of *Double M Properties*, Respondent.
Docket No. CWA-06-2022-1772

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order of Designation**, dated August 15, 2022, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.



Mary Angeles
Paralegal Specialist

Original by OALJ E-Filing System to:
Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf

Copy by Electronic and Regular Mail to:
Efren Ordóñez
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (Mail Code 6RC-EW)
Dallas, TX 75270-2102
Email: ordonez.efren@epa.gov
Counsel for Complainant

Pete Domenici
Domenici Law Firm
320 Gold Avenue SW, Suite 1000
Albuquerque, NM 87102
Email: pdomenici@domenicilaw.com
Counsel for Respondent

Dated: August 15, 2022
Washington, D.C.



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:)	
)	
Double M Properties,)	Docket No. CWA-06-2022-1772
)	
Respondent.)	

PREHEARING ORDER

As the parties have previously been notified, I am designated to preside over this proceeding. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1 to 22.45 (“Rules of Practice” or “Rules”). The parties are advised to familiarize themselves with the applicable statute(s) and the Rules of Practice. Orders and decisions issued by the Administrative Law Judges are accessible on the website for the Office of Administrative Law Judges (“OALJ”) at www.epa.gov/alj.

Settlement. U.S. Environmental Protection Agency (“Agency” or “EPA”) policy encourages settlement of a proceeding without the necessity of a formal hearing, and the procedures regarding settlements are set forth in Section 22.18 of the Rules of Practice, 40 C.F.R. § 22.18. The benefits of a negotiated settlement may far outweigh the uncertainty, time, and expense associated with a litigated proceeding. With these considerations in mind, the parties are directed to engage in a settlement conference on or before **September 2, 2022**, and attempt to reach an amicable resolution of this matter. Without mentioning any specific terms of settlement, Complainant shall file a Status Report regarding this conference and the status of settlement on or before **September 9, 2022**. If the case is settled, a fully-executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk no later than **September 30, 2022**, and a courtesy copy shall be filed with the Headquarters Hearing Clerk.

In the event that a fully-executed Consent Agreement and Final Order is not filed on or before **September 30, 2022**, the parties must prepare for hearing and shall strictly comply with the following prehearing requirements of this Order. *The pendency of settlement negotiations or the existence of a settlement in principle does not constitute a basis for failing to strictly comply with those requirements. Only the filing with the Regional Hearing Clerk of a fully-executed Consent Agreement and Final Order, or an order of the undersigned, excuses noncompliance with filing deadlines.*

Preliminary Statement. No later than **September 9, 2022**, each party shall file with the Headquarters Hearing Clerk, serve on the opposing party, and serve on the undersigned a

Preliminary Statement that (1) identifies the party's preference for the location of the hearing¹; (2) indicates the party's consent to service of orders and decisions issued by this Tribunal, and to service of documents filed by other parties, *by email only* during this proceeding (service by email includes sending a link via email to an online file sharing service); and (3) provides a valid email address at which the party will accept such service.²

Prehearing Exchange. This Order is issued pursuant to Section 22.19(a) of the Rules of Practice. *See* 40 C.F.R. § 22.19(a). Accordingly, the parties are hereby directed to engage in the following prehearing exchange of information:

1. Each party shall file with the Headquarters Hearing Clerk, serve on the opposing party, and serve on the undersigned:

(A) a list of names of the witnesses intended to be called at the hearing, identifying each as a fact witness or an expert witness, a brief narrative summary of their expected testimony, and a curriculum vitae or resume for each identified expert witness; or a statement that no witnesses will be called;

(B) a list of all exhibits, numbered in sequential order, that the party intends to produce at the hearing, along with a copy of each exhibit marked for identification as follows:

- i. Complainant's exhibits shall be identified as "CX."
- ii. Respondent's exhibits shall be identified as "RX."
- iii. Each exhibit shall be labeled numerically with the corresponding exhibit number on each page of the exhibit. For example, the first exhibit provided by Complainant shall be labeled on each page of the exhibit as "CX 1." The label for each exhibit shall be located at the bottom (footer) of the document and aligned to the right margin.
- iv. Any exhibit consisting of more than one page shall include page numbers at the bottom (footer) of each page, aligned to the right margin. The pages shall be numbered consecutively as follows: "Page X of [total of] Y," with "Page X" representing the page number in sequence beginning from the number 1 and "[total of] Y" representing the total number of pages in the exhibit. For example, to identify the third page of Complainant's first exhibit, which has five pages total, the bottom of the page shall read "CX 1 Page 3 of 5."

(C) a statement specifying the amount of time needed to present its direct case, *see* 40

¹ The Rules of Practice provide that the hearing shall be held in the county where the respondent resides or conducts the business that the hearing concerns, in the city in which the complainant is located, or in Washington, D.C., unless the presiding judge determines that there is good cause to hold it another location or by telephone. 40 C.F.R. §§ 22.21(d), 22.19(d). The parties are hereby advised that notwithstanding the direction in this Order for each party to identify its preference for the location of the hearing, the hearing may be conducted by video conference depending upon conditions related to the ongoing COVID-19 pandemic.

² The Rules of Practice allow for electronic service, and in the interest of judicial efficiency, it will be this Tribunal's practice to serve the parties by email only. *See* 40 C.F.R. §§ 22.5(b)(2), 22.6 (authorizing service of most documents by email). If a party is unable to receive service by email, the party shall affirmatively state that it is unable to accept service by email and provide a valid address at which it may be served by regular U.S. mail.

C.F.R. §§ 22.21(d), 22.19(d), and indicating whether the services of an interpreter are necessary with regard to the testimony of any witness(es). If the services of an interpreter are necessary, the statement shall also indicate the language that is to be interpreted.

2. In addition, Complainant shall submit the following as part of its Initial Prehearing Exchange:

(A) documentation showing that service of the Complaint was completed in accordance with Section 22.5(b)(1) of the Rules of Practice, 40 C.F.R. § 22.5(b)(1);

(B) a brief narrative statement, and a copy of any documents in support, explaining in detail the factual and/or legal bases for the allegations denied or otherwise not admitted in Respondent's Answer;

(C) all factual information and supporting documentation relevant to the assessment of a penalty, and a copy, or a statement of the internet address (URL), of any policy or guidance intended to be relied on by Complainant in calculating a proposed penalty;

(D) a copy, or a statement of the internet address (URL), of any EPA guidance documents and/or policies, including any updates or revisions to such guidance and/or policies, and any preambles to regulations that Complainant has relied upon with regard to the allegations set forth in the Complaint;

(E) a detailed explanation of the factors considered and methodology utilized in calculating the amount of the proposed penalty, in accordance with the criteria set forth in the particular statute authorizing this proceeding and as referenced in the proposed civil penalty section of the Complaint; and

(F) proof that public notice has been provided regarding the proposed assessment of a civil penalty under Section 309(g) of the Clean Water Act. *See* 33 U.S.C. § 1319(g)(4)(A); 40 C.F.R. § 22.45(b).

3. In addition, Respondent shall submit the following as part of its Prehearing Exchange:

(A) a copy of any documents in support of the denials made in its Answer;

(B) a copy of any documents in support of any asserted affirmative defenses and an explanation of the arguments in support of any such affirmative defenses;

(C) all factual information that Respondent considers relevant to the assessment of a penalty and any supporting documentation; and

(D) if Respondent takes the position that the proposed penalty should be reduced or eliminated on any grounds, such as an inability to pay, then provide a detailed narrative statement explaining the precise factual and legal bases for its position and a copy of any and all documents upon which it intends to rely in support of such position.

4. Finally, Complainant shall submit as part of its Rebuttal Prehearing Exchange:

(A) a statement and/or any documents in response to Respondent's Prehearing Exchange as to provisions 3(A) through 3(D) above.

The prehearing exchanges called for above shall be filed pursuant to the following schedule:

September 30, 2022	Complainant's Initial Prehearing Exchange
October 21, 2022	Respondent's Prehearing Exchange
November 4, 2022	Complainant's Rebuttal Prehearing Exchange

Section 22.19(a) of the Rules of Practice provides that, except in accordance with Section 22.22(a), any document not included in the prehearing exchange shall not be admitted into evidence, and any witness whose name and testimony summary are not included in the prehearing exchange shall not be allowed to testify. 40 C.F.R. § 22.19(a). Therefore, each party is advised to thoughtfully prepare its prehearing exchange.

In general, hearings are scheduled following the submission of the prehearing exchanges. The parties will be provided with adequate notice of the scheduled hearing to enable them to meet the remaining deadlines contained in this Order.

Supplement to Prehearing Exchange. Any addition of a proposed witness or exhibit to the prehearing exchange, submitted pursuant to Section 22.19(f) of the Rules of Practice, must be filed with an accompanying *motion to supplement the prehearing exchange* only when supplementation is sought within 60 days of the scheduled hearing.

Motions. Prior to filing any motion, the moving party must contact all other parties to determine whether the other parties have any objection to the granting of the relief sought in the motion, and the motion shall state the position of the other parties. The mere consent of the other parties to the relief sought does not assure that the motion will be granted. Furthermore, all motions must be submitted in sufficient time to permit the filing of a response and a reply, as well as the issuance of a ruling on the motion, before any relevant deadline set by this or any subsequent order. *See generally* 40 C.F.R. §§ 22.16(b), 22.7(c). *Motions not filed in a timely manner may not be considered.*

Joint motions for the appointment of a neutral, filed pursuant to Section 22.18(d)(3) of the Rules of Practice, will not be entertained prior to the deadline for Complainant's Rebuttal Prehearing Exchange and shall be filed no later than seven days after that deadline. *Dispositive motions* regarding liability, such as a motion for accelerated decision or motion to dismiss under Section 22.20(a) of the Rules of Practice, must be filed within 30 days after the due date for Complainant's Rebuttal Prehearing Exchange. *Non-dispositive motions*, such as motions for additional discovery, motions for subpoenas, and motions in limine, must be filed no later than

60 days prior to the scheduled hearing.

Pursuant to Section 22.16(d) of the Rules of Practice, a party may submit a written request for oral argument upon filing a motion, a response to a motion, or a reply. 40 C.F.R. § 22.16(d). The requesting party shall propose an appropriate location for the argument. The OALJ has access to videoconferencing technology that may be utilized for oral arguments on motions, which may minimize the expenditure of time and monetary resources in connection with such arguments. A request for oral argument may be granted, in the undersigned's discretion, where further clarification and elaboration of arguments would be of assistance in ruling on the motion.

Default and Opportunity for a Hearing. The Complaint in this matter gave Respondent notice and opportunity for a hearing, in accordance with Section 554 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 554. Respondent's Answer to the Complaint contained a request for a hearing. In this regard, Section 554(c)(2) of the APA sets out that a hearing be conducted under Section 556 of the APA. 5 U.S.C. § 554(c)(2). Section 556(d) provides that a party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. 5 U.S.C. § 556(d). Thus, Respondent has the right to defend against Complainant's charges by way of direct evidence, rebuttal evidence, or through cross-examination of Complainant's witness(es). Respondent is entitled to elect any or all three means to pursue its defenses.

Respondent is hereby notified that its failure to comply with the prehearing exchange requirements set forth herein may result in the entry of a default judgment against t. Complainant is notified that its failure to file its prehearing exchange in a timely manner can result in a dismissal of the case with prejudice.

Filing and Service.³ Consistent with Section 22.5 of the Rules of Practice, the original and one copy of all documents intended to be part of the record in this proceeding (excluding a fully-executed Consent Agreement and Final Order, which must be filed with the Regional Hearing Clerk) shall be filed with the Headquarters Hearing Clerk.⁴ Electronic filing is strongly encouraged.⁵ To file a document electronically, a party shall use a web-based tool known as the OALJ E-Filing System by visiting the OALJ's website at www.epa.gov/alj. Documents filed electronically are deemed to constitute both the original and one copy of the document.

³ The parties are advised to visit the OALJ's website at <https://www.epa.gov/alj/filing-and-service-during-covid-19> for the most current guidance on filing and service procedures in light of the ongoing COVID-19 pandemic.

⁴ Pursuant to the Headquarters Hearing Clerk Pilot Project, the OALJ and Headquarters Hearing Clerk shall keep the official record and be the proper filing location for all contested cases in which an answer was filed after May 1, 2012. For more information, see the OALJ's website at www.epa.gov/alj.

⁵ More information about electronic filing may be found in the Standing Order Authorizing Electronic Filing in Proceedings Before the Office of Administrative Law Judges available on the OALJ's website at <https://www.epa.gov/sites/production/files/2014-10/documents/alj-standing-order-efiling.pdf>.

Any party choosing to file electronically must first register with the OALJ E-Filing System at https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf. There may be a delay of one to two business days between the time a party applies for registration and the time at which the party is able to upload documents into the system.

A document submitted to the OALJ E-Filing System is considered “filed” at the time and date of electronic reception, as recorded by the OALJ E-Filing System immediately upon reception. To be considered timely, documents submitted through the OALJ E-Filing System must be received by 11:59 p.m. Eastern Time on the date the document is due, unless another time is specified by the Judge. Within an hour of a document being electronically filed, the OALJ E-Filing System will generate an electronic receipt of the submission that will be sent by email to both the party submitting the document and the Headquarters Hearing Clerk.⁶

The OALJ E-Filing System will accept any type of digital file, but the file size is limited to 70 megabytes.⁷ Electronically filed textual documents must be in Portable Document Format (“PDF”). A motion and any associated brief may be filed together through the OALJ E-Filing System. However, any documents filed in support of a brief, motion, or other filing, such as copies of proposed exhibits submitted as part of party’s prehearing exchange, should be filed separately as an attachment. Where a party wishes to file multiple documents in support of a brief, motion, or other filing, rather than filing a separate attachment for each such document, the documents should be compiled into a single electronic file and filed as a single attachment, to the extent technically practicable. Attached to this Order is further guidance on the use of the OALJ E-Filing System for purposes of electronic filing.

Alternatively, if a party is unable to file a document utilizing the OALJ E-Filing System, e.g., the party lacks access to a computer, the party may file the document by U.S. mail or facsimile.⁸ U.S. mail is currently being delivered to this Tribunal at an offsite location on a

⁶ The emailed electronic receipt will be the filing party’s only proof that the OALJ received the submitted document. The absence or presence of a document on the OALJ’s E-Docket Database webpage, available at https://yosemite.epa.gov/oarm/alj/alj_web_docket.nsf, or on the Agency’s Administrative Enforcement Dockets webpage, available at <https://yosemite.epa.gov/oa/rhc/epaadmin.nsf>, is not proof that the document was or was not received. If the filing party does not receive an electronic receipt within one hour after submitting the document through the OALJ E-Filing System, the Headquarters Hearing Clerk may be able to confirm receipt of the document but not earlier than one hour after the document was submitted.

⁷ If a party’s multimedia file exceeds 70 megabytes, the party may save the file on a compact disc and send it by U.S. mail to the mailing address identified in this Order, or the party may contact the Headquarters Hearing Clerk at (202) 564-6281 for instructions on alternative electronic filing methods.

⁸ Because of the ongoing COVID-19 pandemic, this Tribunal’s ability to receive filings and correspondence by U.S. mail and facsimile is limited. If a party is without access to a computer and must file documents by U.S. mail or facsimile, the party shall notify the Headquarters Hearing Clerk *every time* it files a document in such a manner by calling the Headquarters Hearing Clerk at (202) 564-6281.

At this time, the Tribunal is not able to accept filings or correspondence by courier or commercial delivery service, such as UPS, FedEx, and DHL. Likewise, the physical office of the OALJ is not currently accessible to the public, and the Tribunal is not able to receive documents by personal delivery. *See* Order Urging Electronic Service and Filing (April 10, 2020).

weekly basis only, and documents sent by facsimile will also be received offsite. To file a document using U.S. mail, the document shall be sent to the following mailing address:

Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Ave., NW
Mail Code 1900R
Washington, DC 20460

Facsimile may be used to file a document if it is fewer than 20 pages in length. To file a document using facsimile, the document shall be sent to this Tribunal's offsite location at (916) 550-9639. A document submitted by U.S. mail or facsimile is considered "filed" when the Headquarters Hearing Clerk physically receives it, as reflected by the inked date stamp physically applied by the Headquarters Hearing Clerk to the paper copy of the document.

Regardless of the method of filing, all filed documents must be signed in accordance with 40 C.F.R. § 22.5(c) and must contain the contact name, telephone number, mailing address, and email address of the filing party or its authorized representative.

A copy of each document filed in this proceeding shall also be "served" by the filing party on the presiding judge and on all other parties. 40 C.F.R. § 22.5(b). While the Rules of Practice ordinarily allow documents to be served by U.S. mail, commercial delivery service, or personal delivery, as well as by facsimile or email if service by those electronic means is consented to in writing, 40 C.F.R. § 22.5(b)(2), this Tribunal strongly encourages parties to serve all documents on opposing parties by electronic means only, *see* Order Urging Electronic Service and Filing (April 10, 2020). Documents filed electronically through the OALJ E-Filing System are deemed to have also been served electronically on the presiding judge. To serve a document on the presiding judge by U.S. mail or facsimile, the mailing address or facsimile number listed above shall be used. Service will be considered complete upon mailing or upon electronic transmission. 40 C.F.R. § 22.7(c).

Every filed document must show how and when the document was filed with the Headquarters Hearing Clerk and how and when the document was served on the presiding judge and each other party. This showing may be made through a written statement or Certificate of Service, an example of which is attached to this Order. 40 C.F.R. § 22.5(a)(3).

The parties are advised NOT to include, attach, or refer to any terms of settlement offers or agreements in any document submitted to the undersigned, and no copies of Consent Agreements and Final Orders shall be submitted, or attached to any document submitted, to the undersigned except those that are fully executed and filed with the Regional Hearing Clerk.

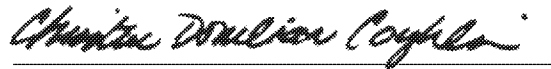
Privacy Act Statement; Notice of Disclosure of Confidential and Personal Information; Waiver of Confidentiality and Consent to Public Disclosure. The parties are cautioned that, unless redacted, all information filed with the OALJ will be made publicly

available. Thus, the parties are hereby advised not to file any Confidential Business Information (“CBI”) or Personally Identifiable Information (“PII”) pertaining to any person. This may include information that, if disclosed to the public, would constitute an unwarranted invasion of personal privacy, such as Social Security numbers, medical records, and personal financial information.

Where filing of such information is necessary, the parties are hereby advised to redact (i.e., remove or obscure) the CBI or PII present in the materials filed. *To the extent that any person files or submits any unredacted CBI (except in accordance with 40 C.F.R. Part 2) or PII pertaining to themselves or their client, that person thereby waives any claims to confidentiality and thereby consents to public disclosure by EPA, including posting on the Internet, of all such information they submit. Submission of such information through the OALJ E-Filing System will also be considered a waiver of confidentiality. To protect such information against public disclosure, parties must follow the procedures specified on the OALJ’s website at www.epa.gov/alj and in 40 C.F.R. Part 2.*

Contact Information. For any questions about this Order, the Rules, or any other procedural, scheduling, or logistical issues, you may contact Jennifer Almase, Attorney-Advisor, at almase.jennifer@epa.gov or (202) 564-1170.

SO ORDERED.


Christine Donelian Coughlin
Administrative Law Judge

Dated: August 15, 2022
Washington, D.C.

In the Matter of *Double M Properties*, Respondent.
Docket No. CWA-06-2022-1772

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Prehearing Order**, dated August 15, 2022, and issued by Administrative Law Judge Christine Donelian Coughlin, was sent this day to the following parties in the manner indicated below.



Mary Angeles
Paralegal Specialist

Original by OALJ E-Filing System to:
Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf

Copy by Electronic and Regular Mail to:
Efren Ordóñez
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (Mail Code 6RC-EW)
Dallas, TX 75270-2102
Email: ordonez.efren@epa.gov
Counsel for Complainant

Pete Domenici
Domenici Law Firm
320 Gold Avenue SW, Suite 1000
Albuquerque, NM 87102
Email: pdomenici@domenicilaw.com
Counsel for Respondent

Dated: August 15, 2022
Washington, D.C.

**OFFICE OF ADMINISTRATIVE LAW JUDGES
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

WASHINGTON, D.C.

GUIDANCE ON USE OF OALJ E-FILING SYSTEM

The Office of Administrative Law Judges (“OALJ”) utilizes a web-based tool known as the OALJ E-Filing System to allow registered users to file documents electronically. Sending a document to oaljfilng@epa.gov or an email address of a staff member within the OALJ is not a valid method of electronic filing, unless otherwise specified in writing by the presiding Administrative Law Judge. The OALJ E-Filing System is accessible at www.epa.gov/alj. Documents filed electronically are deemed to constitute both the original and one copy of the document, and are deemed to have been both filed with the Headquarters Hearing Clerk and served electronically on the presiding Administrative Law Judge.

Any party choosing to file electronically must first register with the OALJ E-Filing System at https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf. Registration is not automated. There may be a delay of one to two business days between the time a party applies for registration and the time at which the party is able to upload documents into the system. Parties are advised to plan accordingly.

To be considered timely, documents submitted through the OALJ E-Filing System must be received by 11:59 p.m. Eastern Time on the day the document is required to be filed, unless another time is specified by the presiding Administrative Law Judge. Immediately upon reception by the OALJ E-Filing System, the document will be marked with the official filing date and time. The OALJ E-Filing system will then generate an electronic receipt of the submission that will be sent by email to both the party submitting the document and the Headquarters Hearing Clerk. There may be a delay of approximately one hour between submission of the document and transmission of the electronic receipt.

The OALJ E-Filing System will accept any type of digital file, but the file size is limited to 70 megabytes. Electronically filed textual documents must be in Portable Document Format (“PDF”).

A motion and any associated brief may be filed together through the OALJ E-Filing System. However, any documents filed in support of a brief, motion, or other filing, such as copies of proposed exhibits submitted as part of a party’s prehearing exchange of information, should be submitted separately as an attachment. Where a party wishes to file multiple documents in support of a brief, motion, or other filing, rather than filing a separate attachment for each such document, the documents should be compiled into a single electronic file and filed as a single attachment, to the extent technically practicable. For example, where a party is filing copies of 12 proposed exhibits as part of its prehearing exchange, those 12 proposed exhibits should be submitted together as one attachment consisting of a single electronic file, to the extent technically practicable.

The OALJ E-Filing System is not equipped either to accommodate or to protect the privacy of confidential business information (“CBI”) or sensitive personally identifiable information (“PII”) that could be used to identify or trace an individual, such as Social Security numbers, medical records, or personal financial information. If a party wishes to electronically file a document containing such information, the party shall redact (i.e., remove or obscure) that information from the document before filing the redacted version of the document through the OALJ E-Filing System. If the party wishes for the presiding Administrative Law Judge to consider the CBI or PII contained in the document, the party shall also file a paper copy of the unredacted version of the document by means other than the OALJ E-Filing System, in accordance with the procedures specified on the OALJ’s website at www.epa.gov/alj. To the extent that any person files any un-redacted CBI or PII through the OALJ E-Filing System, that person thereby waives any claims to confidentiality and consents to public disclosure of all such information.

Message

From: Vaughn, Lorena [Vaughn.Lorena@epa.gov]
Sent: 8/23/2022 9:14:19 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]
Subject: Double M Properties Mail
Attachments: Scanned_from_8_8325_LX_CX825_208-23-2022-154750.pdf

From: 8_8325_LX_CX825_2@epa.gov <8_8325_LX_CX825_2@epa.gov>
Sent: Tuesday, August 23, 2022 3:48 PM
To: Vaughn, Lorena <Vaughn.Lorena@epa.gov>
Subject:



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:

Double M Properties,

Respondent.

)
)
)
)
)

Docket No. CWA-06-2022-1772

PREHEARING ORDER

As the parties have previously been notified, I am designated to preside over this proceeding. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1 to 22.45 ("Rules of Practice" or "Rules"). The parties are advised to familiarize themselves with the applicable statute(s) and the Rules of Practice. Orders and decisions issued by the Administrative Law Judges are accessible on the website for the Office of Administrative Law Judges ("OALJ") at www.epa.gov/alj.

Settlement. U.S. Environmental Protection Agency ("Agency" or "EPA") policy encourages settlement of a proceeding without the necessity of a formal hearing, and the procedures regarding settlements are set forth in Section 22.18 of the Rules of Practice, 40 C.F.R. § 22.18. The benefits of a negotiated settlement may far outweigh the uncertainty, time, and expense associated with a litigated proceeding. With these considerations in mind, the parties are directed to engage in a settlement conference on or before **September 2, 2022**, and attempt to reach an amicable resolution of this matter. Without mentioning any specific terms of settlement, Complainant shall file a Status Report regarding this conference and the status of settlement on or before **September 9, 2022**. If the case is settled, a fully-executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk no later than **September 30, 2022**, and a courtesy copy shall be filed with the Headquarters Hearing Clerk.

In the event that a fully-executed Consent Agreement and Final Order is not filed on or before **September 30, 2022**, the parties must prepare for hearing and shall strictly comply with the following prehearing requirements of this Order. *The pendency of settlement negotiations or the existence of a settlement in principle does not constitute a basis for failing to strictly comply with those requirements. Only the filing with the Regional Hearing Clerk of a fully-executed Consent Agreement and Final Order, or an order of the undersigned, excuses noncompliance with filing deadlines.*

Preliminary Statement. No later than **September 9, 2022**, each party shall file with the Headquarters Hearing Clerk, serve on the opposing party, and serve on the undersigned a

Preliminary Statement that (1) identifies the party's preference for the location of the hearing¹; (2) indicates the party's consent to service of orders and decisions issued by this Tribunal, and to service of documents filed by other parties, *by email only* during this proceeding (service by email includes sending a link via email to an online file sharing service); and (3) provides a valid email address at which the party will accept such service.²

Prehearing Exchange. This Order is issued pursuant to Section 22.19(a) of the Rules of Practice. *See* 40 C.F.R. § 22.19(a). Accordingly, the parties are hereby directed to engage in the following prehearing exchange of information:

I. Each party shall file with the Headquarters Hearing Clerk, serve on the opposing party, and serve on the undersigned:

(A) a list of names of the witnesses intended to be called at the hearing, identifying each as a fact witness or an expert witness, a brief narrative summary of their expected testimony, and a curriculum vitae or resume for each identified expert witness; or a statement that no witnesses will be called;

(B) a list of all exhibits, numbered in sequential order, that the party intends to produce at the hearing, along with a copy of each exhibit marked for identification as follows:

- i. Complainant's exhibits shall be identified as "CX."
- ii. Respondent's exhibits shall be identified as "RX."
- iii. Each exhibit shall be labeled numerically with the corresponding exhibit number on each page of the exhibit. For example, the first exhibit provided by Complainant shall be labeled on each page of the exhibit as "CX 1." The label for each exhibit shall be located at the bottom (footer) of the document and aligned to the right margin.
- iv. Any exhibit consisting of more than one page shall include page numbers at the bottom (footer) of each page, aligned to the right margin. The pages shall be numbered consecutively as follows: "Page X of [total of] Y," with "Page X" representing the page number in sequence beginning from the number 1 and "[total of] Y" representing the total number of pages in the exhibit. For example, to identify the third page of Complainant's first exhibit, which has five pages total, the bottom of the page shall read "CX 1 Page 3 of 5."

(C) a statement specifying the amount of time needed to present its direct case, *see* 40

¹ The Rules of Practice provide that the hearing shall be held in the county where the respondent resides or conducts the business that the hearing concerns, in the city in which the complainant is located, or in Washington, D.C., unless the presiding judge determines that there is good cause to hold it another location or by telephone. 40 C.F.R. §§ 22.21(d), 22.19(d). The parties are hereby advised that notwithstanding the direction in this Order for each party to identify its preference for the location of the hearing, the hearing may be conducted by video conference depending upon conditions related to the ongoing COVID-19 pandemic.

² The Rules of Practice allow for electronic service, and in the interest of judicial efficiency, it will be this Tribunal's practice to serve the parties by email only. *See* 40 C.F.R. §§ 22.5(b)(2), 22.6 (authorizing service of most documents by email). If a party is unable to receive service by email, the party shall affirmatively state that it is unable to accept service by email and provide a valid address at which it may be served by regular U.S. mail.

C.F.R. §§ 22.21(d), 22.19(d), and indicating whether the services of an interpreter are necessary with regard to the testimony of any witness(es). If the services of an interpreter are necessary, the statement shall also indicate the language that is to be interpreted.

2. In addition, Complainant shall submit the following as part of its Initial Prehearing Exchange:

(A) documentation showing that service of the Complaint was completed in accordance with Section 22.5(b)(1) of the Rules of Practice, 40 C.F.R. § 22.5(b)(1);

(B) a brief narrative statement, and a copy of any documents in support, explaining in detail the factual and/or legal bases for the allegations denied or otherwise not admitted in Respondent's Answer;

(C) all factual information and supporting documentation relevant to the assessment of a penalty, and a copy, or a statement of the internet address (URL), of any policy or guidance intended to be relied on by Complainant in calculating a proposed penalty;

(D) a copy, or a statement of the internet address (URL), of any EPA guidance documents and/or policies, including any updates or revisions to such guidance and/or policies, and any preambles to regulations that Complainant has relied upon with regard to the allegations set forth in the Complaint;

(E) a detailed explanation of the factors considered and methodology utilized in calculating the amount of the proposed penalty, in accordance with the criteria set forth in the particular statute authorizing this proceeding and as referenced in the proposed civil penalty section of the Complaint; and

(F) proof that public notice has been provided regarding the proposed assessment of a civil penalty under Section 309(g) of the Clean Water Act. *See* 33 U.S.C. § 1319(g)(4)(A); 40 C.F.R. § 22.45(b).

3. In addition, Respondent shall submit the following as part of its Prehearing Exchange:

(A) a copy of any documents in support of the denials made in its Answer;

(B) a copy of any documents in support of any asserted affirmative defenses and an explanation of the arguments in support of any such affirmative defenses;

(C) all factual information that Respondent considers relevant to the assessment of a penalty and any supporting documentation; and

(D) if Respondent takes the position that the proposed penalty should be reduced or eliminated on any grounds, such as an inability to pay, then provide a detailed narrative statement explaining the precise factual and legal bases for its position and a copy of any and all documents upon which it intends to rely in support of such position.

4. Finally, Complainant shall submit as part of its Rebuttal Prehearing Exchange:

(A) a statement and/or any documents in response to Respondent's Prehearing Exchange as to provisions 3(A) through 3(D) above.

The prehearing exchanges called for above shall be filed pursuant to the following schedule:

September 30, 2022	Complainant's Initial Prehearing Exchange
October 21, 2022	Respondent's Prehearing Exchange
November 4, 2022	Complainant's Rebuttal Prehearing Exchange

Section 22.19(a) of the Rules of Practice provides that, except in accordance with Section 22.22(a), any document not included in the prehearing exchange shall not be admitted into evidence, and any witness whose name and testimony summary are not included in the prehearing exchange shall not be allowed to testify. 40 C.F.R. § 22.19(a). Therefore, each party is advised to thoughtfully prepare its prehearing exchange.

In general, hearings are scheduled following the submission of the prehearing exchanges. The parties will be provided with adequate notice of the scheduled hearing to enable them to meet the remaining deadlines contained in this Order.

Supplement to Prehearing Exchange. Any addition of a proposed witness or exhibit to the prehearing exchange, submitted pursuant to Section 22.19(f) of the Rules of Practice, must be filed with an accompanying *motion to supplement the prehearing exchange* only when supplementation is sought within 60 days of the scheduled hearing.

Motions. Prior to filing any motion, the moving party must contact all other parties to determine whether the other parties have any objection to the granting of the relief sought in the motion, and the motion shall state the position of the other parties. The mere consent of the other parties to the relief sought does not assure that the motion will be granted. Furthermore, all motions must be submitted in sufficient time to permit the filing of a response and a reply, as well as the issuance of a ruling on the motion, before any relevant deadline set by this or any subsequent order. *See generally* 40 C.F.R. §§ 22.16(b), 22.7(c). *Motions not filed in a timely manner may not be considered.*

Joint motions for the appointment of a neutral, filed pursuant to Section 22.18(d)(3) of the Rules of Practice, will not be entertained prior to the deadline for Complainant's Rebuttal Prehearing Exchange and shall be filed no later than seven days after that deadline. *Dispositive motions* regarding liability, such as a motion for accelerated decision or motion to dismiss under Section 22.20(a) of the Rules of Practice, must be filed within 30 days after the due date for Complainant's Rebuttal Prehearing Exchange. *Non-dispositive motions*, such as motions for additional discovery, motions for subpoenas, and motions in limine, must be filed no later than

60 days prior to the scheduled hearing.

Pursuant to Section 22.16(d) of the Rules of Practice, a party may submit a written request for oral argument upon filing a motion, a response to a motion, or a reply. 40 C.F.R. § 22.16(d). The requesting party shall propose an appropriate location for the argument. The OALJ has access to videoconferencing technology that may be utilized for oral arguments on motions, which may minimize the expenditure of time and monetary resources in connection with such arguments. A request for oral argument may be granted, in the undersigned's discretion, where further clarification and elaboration of arguments would be of assistance in ruling on the motion.

Default and Opportunity for a Hearing. The Complaint in this matter gave Respondent notice and opportunity for a hearing, in accordance with Section 554 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 554. Respondent's Answer to the Complaint contained a request for a hearing. In this regard, Section 554(c)(2) of the APA sets out that a hearing be conducted under Section 556 of the APA. 5 U.S.C. § 554(c)(2). Section 556(d) provides that a party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. 5 U.S.C. § 556(d). Thus, Respondent has the right to defend against Complainant's charges by way of direct evidence, rebuttal evidence, or through cross-examination of Complainant's witness(es). Respondent is entitled to elect any or all three means to pursue its defenses.

Respondent is hereby notified that its failure to comply with the prehearing exchange requirements set forth herein may result in the entry of a default judgment against it. Complainant is notified that its failure to file its prehearing exchange in a timely manner can result in a dismissal of the case with prejudice.

Filing and Service.³ Consistent with Section 22.5 of the Rules of Practice, the original and one copy of all documents intended to be part of the record in this proceeding (excluding a fully-executed Consent Agreement and Final Order, which must be filed with the Regional Hearing Clerk) shall be filed with the Headquarters Hearing Clerk.⁴ Electronic filing is strongly encouraged.⁵ To file a document electronically, a party shall use a web-based tool known as the OALJ E-Filing System by visiting the OALJ's website at www.epa.gov/alj. Documents filed electronically are deemed to constitute both the original and one copy of the document.

³ The parties are advised to visit the OALJ's website at <https://www.epa.gov/alj/filing-and-service-during-covid-19> for the most current guidance on filing and service procedures in light of the ongoing COVID-19 pandemic.

⁴ Pursuant to the Headquarters Hearing Clerk Pilot Project, the OALJ and Headquarters Hearing Clerk shall keep the official record and be the proper filing location for all contested cases in which an answer was filed after May 1, 2012. For more information, see the OALJ's website at www.epa.gov/alj.

⁵ More information about electronic filing may be found in the Standing Order Authorizing Electronic Filing in Proceedings Before the Office of Administrative Law Judges available on the OALJ's website at <https://www.epa.gov/sites/production/files/2014-10/documents/alj-standing-order-efiling.pdf>.

Any party choosing to file electronically must first register with the OALJ E-Filing System at https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf. There may be a delay of one to two business days between the time a party applies for registration and the time at which the party is able to upload documents into the system.

A document submitted to the OALJ E-Filing System is considered “filed” at the time and date of electronic reception, as recorded by the OALJ E-Filing System immediately upon reception. To be considered timely, documents submitted through the OALJ E-Filing System must be received by 11:59 p.m. Eastern Time on the date the document is due, unless another time is specified by the Judge. Within an hour of a document being electronically filed, the OALJ E-Filing System will generate an electronic receipt of the submission that will be sent by email to both the party submitting the document and the Headquarters Hearing Clerk.⁶

The OALJ E-Filing System will accept any type of digital file, but the file size is limited to 70 megabytes.⁷ Electronically filed textual documents must be in Portable Document Format (“PDF”). A motion and any associated brief may be filed together through the OALJ E-Filing System. However, any documents filed in support of a brief, motion, or other filing, such as copies of proposed exhibits submitted as part of party’s prehearing exchange, should be filed separately as an attachment. Where a party wishes to file multiple documents in support of a brief, motion, or other filing, rather than filing a separate attachment for each such document, the documents should be compiled into a single electronic file and filed as a single attachment, to the extent technically practicable. Attached to this Order is further guidance on the use of the OALJ E-Filing System for purposes of electronic filing.

Alternatively, if a party is unable to file a document utilizing the OALJ E-Filing System, e.g., the party lacks access to a computer, the party may file the document by U.S. mail or facsimile.⁸ U.S. mail is currently being delivered to this Tribunal at an offsite location on a

⁶ The emailed electronic receipt will be the filing party’s only proof that the OALJ received the submitted document. The absence or presence of a document on the OALJ’s E-Docket Database webpage, available at https://yosemite.epa.gov/oarm/alj/alj_web_docket.nsf, or on the Agency’s Administrative Enforcement Dockets webpage, available at <https://yosemite.epa.gov/oa/rhc/epaadmin.nsf>, is not proof that the document was or was not received. If the filing party does not receive an electronic receipt within one hour after submitting the document through the OALJ E-Filing System, the Headquarters Hearing Clerk may be able to confirm receipt of the document but not earlier than one hour after the document was submitted.

⁷ If a party’s multimedia file exceeds 70 megabytes, the party may save the file on a compact disc and send it by U.S. mail to the mailing address identified in this Order, or the party may contact the Headquarters Hearing Clerk at (202) 564-6281 for instructions on alternative electronic filing methods.

⁸ Because of the ongoing COVID-19 pandemic, this Tribunal’s ability to receive filings and correspondence by U.S. mail and facsimile is limited. If a party is without access to a computer and must file documents by U.S. mail or facsimile, the party shall notify the Headquarters Hearing Clerk *every time* it files a document in such a manner by calling the Headquarters Hearing Clerk at (202) 564-6281.

At this time, the Tribunal is not able to accept filings or correspondence by courier or commercial delivery service, such as UPS, FedEx, and DHL. Likewise, the physical office of the OALJ is not currently accessible to the public, and the Tribunal is not able to receive documents by personal delivery. See Order Urging Electronic Service and Filing (April 10, 2020).

weekly basis only, and documents sent by facsimile will also be received offsite. To file a document using U.S. mail, the document shall be sent to the following mailing address:

Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Ave., NW
Mail Code 1900R
Washington, DC 20460

Facsimile may be used to file a document if it is fewer than 20 pages in length. To file a document using facsimile, the document shall be sent to this Tribunal's offsite location at (916) 550-9639. A document submitted by U.S. mail or facsimile is considered "filed" when the Headquarters Hearing Clerk physically receives it, as reflected by the inked date stamp physically applied by the Headquarters Hearing Clerk to the paper copy of the document.

Regardless of the method of filing, all filed documents must be signed in accordance with 40 C.F.R. § 22.5(c) and must contain the contact name, telephone number, mailing address, and email address of the filing party or its authorized representative.

A copy of each document filed in this proceeding shall also be "served" by the filing party on the presiding judge and on all other parties. 40 C.F.R. § 22.5(b). While the Rules of Practice ordinarily allow documents to be served by U.S. mail, commercial delivery service, or personal delivery, as well as by facsimile or email if service by those electronic means is consented to in writing, 40 C.F.R. § 22.5(b)(2), this Tribunal strongly encourages parties to serve all documents on opposing parties by electronic means only, *see* Order Urging Electronic Service and Filing (April 10, 2020). Documents filed electronically through the OALJ E-Filing System are deemed to have also been served electronically on the presiding judge. To serve a document on the presiding judge by U.S. mail or facsimile, the mailing address or facsimile number listed above shall be used. Service will be considered complete upon mailing or upon electronic transmission. 40 C.F.R. § 22.7(c).

Every filed document must show how and when the document was filed with the Headquarters Hearing Clerk and how and when the document was served on the presiding judge and each other party. This showing may be made through a written statement or Certificate of Service, an example of which is attached to this Order. 40 C.F.R. § 22.5(a)(3).

The parties are advised NOT to include, attach, or refer to any terms of settlement offers or agreements in any document submitted to the undersigned, and no copies of Consent Agreements and Final Orders shall be submitted, or attached to any document submitted, to the undersigned except those that are fully executed and filed with the Regional Hearing Clerk.

Privacy Act Statement; Notice of Disclosure of Confidential and Personal Information; Waiver of Confidentiality and Consent to Public Disclosure. The parties are cautioned that, unless redacted, all information filed with the OALJ will be made publicly

available. Thus, the parties are hereby advised not to file any Confidential Business Information ("CBI") or Personally Identifiable Information ("PII") pertaining to any person. This may include information that, if disclosed to the public, would constitute an unwarranted invasion of personal privacy, such as Social Security numbers, medical records, and personal financial information.

Where filing of such information is necessary, the parties are hereby advised to redact (i.e., remove or obscure) the CBI or PII present in the materials filed. *To the extent that any person files or submits any unredacted CBI (except in accordance with 40 C.F.R. Part 2) or PII pertaining to themselves or their client, that person thereby waives any claims to confidentiality and thereby consents to public disclosure by EPA, including posting on the Internet, of all such information they submit. Submission of such information through the OALJ E-Filing System will also be considered a waiver of confidentiality. To protect such information against public disclosure, parties must follow the procedures specified on the OALJ's website at www.epa.gov/alj and in 40 C.F.R. Part 2.*

Contact Information. For any questions about this Order, the Rules, or any other procedural, scheduling, or logistical issues, you may contact Jennifer Almase, Attorney-Advisor, at almase.jennifer@epa.gov or (202) 564-1170.

SO ORDERED.


Christine Donelian Coughlin
Administrative Law Judge

Dated: August 15, 2022
Washington, D.C.

In the Matter of *Double M Properties*, Respondent.
Docket No. CWA-06-2022-1772

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Prehearing Order**, dated August 15, 2022, and issued by Administrative Law Judge Christine Donelian Coughlin, was sent this day to the following parties in the manner indicated below.



Mary Angeles
Paralegal Specialist

Original by OALJ E-Filing System to:

Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf

Copy by Electronic and Regular Mail to:

Efren Ordóñez
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (Mail Code 6RC-EW)
Dallas, TX 75270-2102
Email: ordonez.efren@epa.gov
Counsel for Complainant

Pete Domenici
Domenici Law Firm
320 Gold Avenue SW, Suite 1000
Albuquerque, NM 87102
Email: pdomenici@domenicilaw.com
Counsel for Respondent

Dated: August 15, 2022
Washington, D.C.

**OFFICE OF ADMINISTRATIVE LAW JUDGES
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

WASHINGTON, D.C.

GUIDANCE ON USE OF OALJ E-FILING SYSTEM

The Office of Administrative Law Judges ("OALJ") utilizes a web-based tool known as the OALJ E-Filing System to allow registered users to file documents electronically. Sending a document to oaljfilings@epa.gov or an email address of a staff member within the OALJ is not a valid method of electronic filing, unless otherwise specified in writing by the presiding Administrative Law Judge. The OALJ E-Filing System is accessible at www.epa.gov/alj. Documents filed electronically are deemed to constitute both the original and one copy of the document, and are deemed to have been both filed with the Headquarters Hearing Clerk and served electronically on the presiding Administrative Law Judge.

Any party choosing to file electronically must first register with the OALJ E-Filing System at https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf. Registration is not automated. There may be a delay of one to two business days between the time a party applies for registration and the time at which the party is able to upload documents into the system. Parties are advised to plan accordingly.

To be considered timely, documents submitted through the OALJ E-Filing System must be received by 11:59 p.m. Eastern Time on the day the document is required to be filed, unless another time is specified by the presiding Administrative Law Judge. Immediately upon reception by the OALJ E-Filing System, the document will be marked with the official filing date and time. The OALJ E-Filing system will then generate an electronic receipt of the submission that will be sent by email to both the party submitting the document and the Headquarters Hearing Clerk. There may be a delay of approximately one hour between submission of the document and transmission of the electronic receipt.

The OALJ E-Filing System will accept any type of digital file, but the file size is limited to 70 megabytes. Electronically filed textual documents must be in Portable Document Format ("PDF").

A motion and any associated brief may be filed together through the OALJ E-Filing System. However, any documents filed in support of a brief, motion, or other filing, such as copies of proposed exhibits submitted as part of a party's prehearing exchange of information, should be submitted separately as an attachment. Where a party wishes to file multiple documents in support of a brief, motion, or other filing, rather than filing a separate attachment for each such document, the documents should be compiled into a single electronic file and filed as a single attachment, to the extent technically practicable. For example, where a party is filing copies of 12 proposed exhibits as part of its prehearing exchange, those 12 proposed exhibits should be submitted together as one attachment consisting of a single electronic file, to the extent technically practicable.

The OALJ E-Filing System is not equipped either to accommodate or to protect the privacy of confidential business information ("CBI") or sensitive personally identifiable information ("PII") that could be used to identify or trace an individual, such as Social Security numbers, medical records, or personal financial information. If a party wishes to electronically file a document containing such information, the party shall redact (i.e., remove or obscure) that information from the document before filing the redacted version of the document through the OALJ E-Filing System. If the party wishes for the presiding Administrative Law Judge to consider the CBI or PII contained in the document, the party shall also file a paper copy of the unredacted version of the document by means other than the OALJ E-Filing System, in accordance with the procedures specified on the OALJ's website at www.epa.gov/alj. To the extent that any person files any un-redacted CBI or PII through the OALJ E-Filing System, that person thereby waives any claims to confidentiality and consents to public disclosure of all such information.

Appointment

From: Smalley, Bryant [smalley.bryant@epa.gov]
Sent: 8/24/2022 6:08:12 PM
To: Seager, Cheryl [Seager.Cheryl@epa.gov]; Jones, Curry [jones.curry@epa.gov]; Johnson, Carol [johnson.carol@epa.gov]; Ordonez, Efren [Ordonez.Efren@epa.gov]; McDonald, Scott [mcdonald.scott@epa.gov]
CC: Welton, Patricia [Welton.Patricia@epa.gov]

Subject: Sierra Vista Briefing
Location: Microsoft Teams Meeting

Start: 8/25/2022 3:00:00 PM
End: 8/25/2022 4:00:00 PM
Show Time As: Tentative

Required Attendees: Seager, Cheryl; Jones, Curry; Johnson, Carol; Ordonez, Efren; McDonald, Scott
Optional Attendees: Welton, Patricia

Agenda to follow

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)

Meeting ID: 253 574 318 812

Passcode: f2r6r2

[Download Teams](#) | [Join on the web](#)

Join with a video conferencing device

<sip:teams@video.epa.gov>

Video Conference ID: 117 457 120 2

[Alternate VTC instructions](#)

Or call in (audio only)

[+1 202-991-0477,950626621#](#) United States, Washington DC

Phone Conference ID: 950 626 621#

[Find a local number](#) | [Reset PIN](#)

For all EPA meetings, there is no expectation of privacy regarding any communications. Participation in a recorded meeting will be deemed as consent to be recorded. Information on EPA systems is the property of the Agency and may become official records.

[Learn More](#) | [Meeting options](#)

.....

Message

From: Melissa Threet [mthreet@domenicilaw.com]
Sent: 9/2/2022 7:32:40 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]
CC: Pete Domenici [pdomenici@domenicilaw.com]
Subject: In the Matter of Double M Properties; Docket No. CWA-06-2022-1772;
Attachments: Letter to E. Ordonez.9.1.2022.pdf

Good afternoon, Mr. Ordonez,

Please see the attached letter from Mr. Domenici.

Thank you,

Melissa Threet
Paralegal to Pete V. Domenici, Jr.
DOMENICI LAW FIRM P. C.
OFFICE:
320 GOLD AVE SW, SUITE 1000
ALBUQUERQUE, NM 87102
MAILING:
PO BOX 4295
ALBUQUERQUE, NM 87196-4295
TEL. (505) 883-6250 ext. 103
FAX. (505) 884-3424
mthreet@domenicilaw.com

This email contains confidential information which may also be LEGALLY PRIVILEGED and which is intended only for the use of the individual or entity named above. If the reader of the email is not the intended recipient or an employee or agent, thereof, you are hereby notified that you are in possession of confidential and privileged information. Any dissemination, distribution, or copying of this email is strictly prohibited. If you have received this email in error, Please immediately notify the sender by telephone (collect), and destroy your copy.

Message

From: US EPA Notes Software Authority [US_EPA_Notes_Software_Authority@epa.gov]
Sent: 9/9/2022 7:30:12 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]
CC: Angeles, Mary [Angeles.Mary@epa.gov]
Subject: Receipt confirmation for your eFiling

Hello Efren Ordonez,

We've received your document submission as follows:

Case Name: Double M Properties...
Case Number: CWA-06-2022-1772
Role: Attorney for Complainant
File name: Double M Status Report and Motion to Extend Deadlines.pdf
Received: 9/9/2022 3:30:11 PM
Filing ID: PINT-CJ4QUK
Description:

While most electronic filings are handled the same business day, it can take up to two business days to process your documents. You will receive notification from the clerk if there is any problem with the submission.

If you have questions about your submission please use the information above as a reference when you contact the clerk.
Thank you for eFiling with the Office of Administrative Law Judges.
Please do not reply to this email, instead contact the office through the website:
EPA: Office of the Administrative Law Judges (OALJ): <https://www.epa.gov/oalj/contact.htm>

Message

From: US EPA Notes Software Authority [US_EPA_Notes_Software_Authority@epa.gov]
Sent: 9/9/2022 7:32:14 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]
CC: Angeles, Mary [Angeles.Mary@epa.gov]
Subject: Receipt confirmation for your eFiling

Hello Efren Ordonez,

We've received your document submission as follows:

Case Name: Double M Properties...
Case Number: CWA-06-2022-1772
Role: Attorney for Complainant
File name: Preliminary Statement.pdf
Received: 9/9/2022 3:32:14 PM
Filing ID: PINT-CJ4QVX
Description: Complainant's Preliminary Statement

While most electronic filings are handled the same business day, it can take up to two business days to process your documents. You will receive notification from the clerk if there is any problem with the submission.

If you have questions about your submission please use the information above as a reference when you contact the clerk.
Thank you for eFiling with the Office of Administrative Law Judges.
Please do not reply to this email, instead contact the office through the website:
EPA: Office of the Administrative Law Judges (OALJ): <https://www.epa.gov/oalj/contact.htm>

Message

From: Pete Domenici [pdomenici@domenicilaw.com]
Sent: 9/21/2022 1:50:05 PM
To: Angeles, Mary [Angeles.Mary@epa.gov]
CC: Ordonez, Efren [Ordonez.Efren@epa.gov]; Lorraine Hollingsworth [lhollingsworth@domenicilaw.com]; Bob Prewitt [prewitt@swcp.com]
Subject: Re: Order IMO Double M Properties, Docket No. CWA-06-2022-1772
Attachments: image001.jpg; image002.gif; 2022-09-16 - double m properties - order on complainants mot for ext of pho deadlines - issued.pdf

Received
Thank you

Sent from my iPhone
Pete Domenici Jr
Domenici Law Firm P.C.
320 Gold Ave SW Suite 1000
Albuquerque, New Mexico 87102
505-883-6250
5052692058 cell

On Sep 16, 2022, at 8:14 AM, Angeles, Mary <Angeles.Mary@epa.gov> wrote:

Good morning. Please find attached an order issued by Christine D. Coughlin, Administrative Law Judge in the above case proceeding. Kindly confirm your receipt of this document by replying to this electronic notice. A hard copy will be sent to Mr. Domenici by regular USPS mail. Let me know if you have any questions. Thank you.

*Best,
Mary Angeles (she/ella)
Office of Administrative Law Judges*

Standard USPS Mail:
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Mail Code 1900R
Washington, DC 20460
Direct: 202.564.6281
Gen: 202.564.6255
Cell: 202-809-6807 (Call/Text)
Email: angeles.mary@epa.gov
Electronic Filing: https://yosemite.epa.gov/oa/eab/eab-alj_upload.nsf

Overnight USPS/FedEx/UPS:
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Ronald Reagan Building (MC 1900R)
1300 Pennsylvania Ave., N.W.
Suite M1200
Washington, DC 20004

Message

From: Pete Domenici [pdomenici@domenicilaw.com]
Sent: 10/19/2022 6:21:39 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]
Subject: RE: Double M Properties

Efren
That works
Can you call me at 505-269-2058?

From: Ordonez, Efren <Ordonez.Efren@epa.gov>
Sent: Wednesday, October 19, 2022 10:22 AM
To: Pete Domenici <pdomenici@domenicilaw.com>
Subject: RE: Double M Properties

How about having the call at 2:30 pm CT on Friday?
Efren

From: Pete Domenici <pdomenici@domenicilaw.com>
Sent: Tuesday, October 18, 2022 10:17 AM
To: Ordonez, Efren <Ordonez.Efren@epa.gov>
Subject: RE: Double M Properties

Hi Efren
Can we set up a call to discuss where we are on this?
How is tomorrow afternoon or Friday afternoon?
Thank you
Pete

From: Ordonez, Efren <Ordonez.Efren@epa.gov>
Sent: Friday, September 9, 2022 1:36 PM
To: Pete Domenici <pdomenici@domenicilaw.com>
Subject: Double M Properties

Attached please find the Complainant's Status Report and Motion for Extension of Prehearing Deadlines and Complainant's Preliminary Statement that have been filed with the ALJ.
Efren

Message

From: US EPA Notes Software Authority [US_EPA_Notes_Software_Authority@epa.gov]
Sent: 11/3/2022 3:36:44 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]
CC: Angeles, Mary [Angeles.Mary@epa.gov]
Subject: Receipt confirmation for your eFiling

Hello Efren Ordonez,

We've received your document submission as follows:

Case Name: Double M Properties...
Case Number: CWA-06-2022-1772
Role: Complainant
File name: Motion for Extension of Prehearing Order Deadlines2.pdf
Received: 11/3/2022 11:36:43 AM
Filing ID: PINT-CKTLAA
Description: Request to extend prehearing order deadlines

While most electronic filings are handled the same business day, it can take up to two business days to process your documents. You will receive notification from the clerk if there is any problem with the submission.

If you have questions about your submission please use the information above as a reference when you contact the clerk.
Thank you for eFiling with the Office of Administrative Law Judges.
Please do not reply to this email, instead contact the office through the website:
EPA: Office of the Administrative Law Judges (OALJ): <https://www.epa.gov/oalj/contact.htm>

Message

From: Angeles, Mary [Angeles.Mary@epa.gov]
Sent: 11/3/2022 5:47:39 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]
Subject: Double M Properties, Docket No. CWA-06-2022-1772

Hello Mr. Ordonez, the motion for extension of time in the above proceeding you submitted to the OALJ E-Filing system is missing a certificate of service. Please include a certificate with the motion and refile. The documents can be combined when uploading. Let me know if you have any questions. Thank you.

*Best,
Mary Angeles (she/ella)
Office of Administrative Law Judges*



Be kind to the environment.
Please do not print this email unless necessary.

Standard USPS Mail:
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Mail Code 1900R
Washington, DC 20460
Direct: 202.564.6281
Gen: 202.564.6255
Cell: 202-809-6807
Email: angeles.mary@epa.gov
Electronic Filing: https://yosemite.epa.gov/oa/eab/eab-alj_upload.nsf

Overnight USPS/FedEx/UPS:
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Ronald Reagan Building (MC 1900R)
1300 Pennsylvania Ave., N.W.
Suite M1200
Washington, DC 20004

Message

From: US EPA Notes Software Authority [US_EPA_Notes_Software_Authority@epa.gov]
Sent: 11/3/2022 9:33:05 PM
To: Ordonez, Efren [Ordonez.Efren@epa.gov]
CC: Angeles, Mary [Angeles.Mary@epa.gov]
Subject: Receipt confirmation for your eFiling

Hello Efren Ordonez,

We've received your document submission as follows:

Case Name: Double M Properties...
Case Number: CWA-06-2022-1772
Role: Complainant
File name: Motion for Extension of Prehearing Order Deadlines3.pdf
Received: 11/3/2022 5:33:05 PM
Filing ID: PINT-CKTT9E
Description: Request to extend Prehearing Order deadlines

While most electronic filings are handled the same business day, it can take up to two business days to process your documents. You will receive notification from the clerk if there is any problem with the submission.

If you have questions about your submission please use the information above as a reference when you contact the clerk.
Thank you for eFiling with the Office of Administrative Law Judges.
Please do not reply to this email, instead contact the office through the website:
EPA: Office of the Administrative Law Judges (OALJ): <https://www.epa.gov/oalj/contact.htm>

Message

From: Ordonez, Efren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=81C174FAEDA5479691C4A4EED25D4D9E-ORDONEZ, EFREN]
Sent: 11/7/2022 4:49:02 PM
To: Angeles, Mary [Angeles.Mary@epa.gov]; Pete Domenici [pdomenici@domicilaw.com]
Subject: RE: Order IMO Double M Properties, Docket No. CWA-06-2022-1772

This is to confirm that the order has been received.
Efren Ordonez
ORC, Region 6

From: Angeles, Mary <Angeles.Mary@epa.gov>
Sent: Monday, November 7, 2022 10:43 AM
To: Ordonez, Efren <Ordonez.Efren@epa.gov>; Pete Domenici <pdomenici@domicilaw.com>
Subject: Order IMO Double M Properties, Docket No. CWA-06-2022-1772

Hello. Please find attached an order issued by Christine D. Coughlin, Administrative Law Judge in the above case proceeding. Kindly confirm by replying upon receipt of the document. A hard copy will follow to Mr. Domenici by regular USPS mail. Let me know if you have any questions. Thank you.

*Best,
Mary Angeles (she/ella)
Office of Administrative Law Judges*



Be kind to the environment.
Please do not print this email unless necessary.

Standard USPS Mail:
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Mail Code 1900R
Washington, DC 20460
Direct: 202.564.6281
Gen: 202.564.6255
Cell: 202-809-6807
Email: angeles.mary@epa.gov
Electronic Filing: https://yosemite.epa.gov/oa/eab/eab-alj_upload.nsf

Overnight USPS/FedEx/UPS:
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Ronald Reagan Building (MC 1900R)
1300 Pennsylvania Ave., N.W.
Suite M1200
Washington, DC 20004

Message

From: Ordonez, Efren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=81C174FAEDA5479691C4A4EED25D4D9E-ORDONEZ, EFREN]
Sent: 11/21/2022 9:55:02 PM
To: pdomenici@domenicilaw.com
Subject: Double M Properties

Any word from your client regarding the CAFO?
Efren

Message

From: Ordonez, Efren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=81C174FAEDA5479691C4A4EED25D4D9E-ORDONEZ, EFREN]
Sent: 12/14/2022 10:33:19 PM
To: pdomenici@domenicilaw.com
Subject: Double M - Motion to extend
Attachments: Double M motion to extend 12-14-22.docx

Here is the motion. Please let me know if you have any concerns.
Efren

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§ DOCKET NO. CWA-06-2022-1772
	§
Double M Properties	§ Proceeding to Assess a Class II
	§ Civil Penalty under Section 309(g)
	§ of the Clean Water Act
Respondent	§
	§
NPDES ID. No. NMR1002AG	§

**COMPLAINANT’S MOTION FOR EXTENSION OF PREHEARING ORDER
DEADLINES**

COMES NOW COMPLAINANT, the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), by and through her attorney, who provides the following motion regarding the above-captioned proceeding.

1. The administrative complaint was filed with the Regional Hearing Clerk on July 7, 2022, with Respondent filing an answer on August 9, 2022. A Prehearing Order was issued on September 16, 2022, specifying deadlines for the parties. Complaint has submitted two previous Motions for Extension of Prehearing Order Deadlines, the last motion was filed on November 3, 2022.
2. The Parties have actively been exchanging language for a proposed CAFO, which has required consultation with the principles. The last exchange of language occurred on December 13, 2022. Despite efforts of counsels to finalize the language of the CAFO, the CAFO has not been finalized; however, it appears only a few sentences are needed for resolution.
3. The negotiation process has been impacted by the holiday season. Counsel for Complainant will be on vacation for the last two weeks in December and will be out of the country for most of this time-period. As a result, the CAFO language will not be

ready for internal EPA review this month. Once counsels agree on the CAFO language, the principals will need to review and approve the language. For Complainant, once counsels agree regarding the CAFO language, the CAFO will go through the concurrence process in which several managers review the language, and the Division Director consents to the CAFO. Once the Division Director approves the CAFO, the CAFO is sent you Respondent for signature. Once signed by Respondent, the CAFO is submitted to the Division Director for her signature. Because of the holidays, counsels will not be able to finalize the CAFO language, so the review process is delayed. As a result, additional time is needed.

4. Therefore, Complainant hereby requests an extension of 45 days regarding each of the Prehearing Exchange deadlines specified in the Prehearing Order, dated November 7, 2022. It is anticipated by Complainant that the CAFO will be filed prior to the requested extension date.
5. The extension request is not sought for delay but rather to facilitate negotiations in an effort to resolve the pending issues.
6. Complainant's attorney has discussed the Motion for Extension of Prehearing Order deadlines, and Respondent's attorney has expressed approval of the extension and has no objection.

FOR THESE REASONS, Complainant respectfully request that this Motion be granted and that each of the PREHEARING ORDER deadlines regarding the Prehearing Exchange be extended by 45 days.

Respectfully Submitted,

Efren Ordóñez
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102
Telephone (214) 665-2181
[HYPERLINK "mailto:Ordonez.efren@epa.gov"]

CERTIFICATE OF SERVICE

I certify that the foregoing COMPLAINANT'S MOTION FOR EXTENSION OF PREHEARING ORDER DEADLINES was sent to the following persons, in the manner specified, on the date below:

Via Electronic Transmission Honorable Judge Christine Donelian Coughlin
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Ave., NW
Washington, D.C.
Facsimile: 916/550-9639

Via Electronic Transmission: Pete Domenici
Respondent's Attorney
320 Gold Ave. SW Suite 1000
Albuquerque, New Mexico 87102
[HYPERLINK "mailto:pdomenici@domenicilaw.com"]

Date: December ??, 2022

Efren Ordóñez

Message

From: Ordonez, Efren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=81C174FAEDA5479691C4A4EED25D4D9E-ORDONEZ, EFREN]
Sent: 12/15/2022 7:08:00 PM
To: pdomenici@domenicilaw.com
Subject: Double M
Attachments: Double M motion to extend 12-14-22.pdf

Here is the motion that was filed, as per our discussion.
Efren

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§ DOCKET NO. CWA-06-2022-1772
	§
Double M Properties	§ Proceeding to Assess a Class II
	§ Civil Penalty under Section 309(g)
	§ of the Clean Water Act
Respondent	§
	§
NPDES ID. No. NMR1002AG	§

**COMPLAINANT’S MOTION FOR EXTENSION OF PREHEARING ORDER
DEADLINES**

COMES NOW COMPLAINANT, the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), by and through her attorney, who provides the following motion regarding the above-captioned proceeding.

1. The administrative complaint was filed with the Regional Hearing Clerk on July 7, 2022, with Respondent filing an answer on August 9, 2022. A Prehearing Order was issued on September 16, 2022, specifying deadlines for the parties. Complaint has submitted two previous Motions for Extension of Prehearing Order Deadlines, the last motion was filed on November 3, 2022.
2. The Parties have actively been exchanging language for a proposed CAFO, which has required consultation with the principles. The last exchange of language occurred on December 13, 2022. Despite efforts of counsels to finalize the language of the CAFO, the CAFO has not been finalized; however, it appears only a few sentences are needed for resolution.
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ready for internal EPA review this month. Once counsels agree on the CAFO language, the principals will need to review and approve the language. For Complainant, once counsels agree regarding the CAFO language, the CAFO will go through the concurrence process in which several managers review the language, and the Division Director consents to the CAFO. Once the Division Director approves the CAFO, the CAFO is sent you Respondent for signature. Once signed by Respondent, the CAFO is submitted to the Division Director for her signature. Because of the holidays, counsels will not be able to finalize the CAFO language, so the review process is delayed. As a result, additional time is needed.

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5. The extension request is not sought for delay but rather to facilitate negotiations in an effort to resolve the pending issues.
6. Complainant's attorney has discussed the Motion for Extension of Prehearing Order deadlines, and Respondent's attorney has expressed approval of the extension and has no objection.

FOR THESE REASONS, Complainant respectfully request that this Motion be granted and that each of the PREHEARING ORDER deadlines regarding the Prehearing Exchange be extended by 45 days.

Respectfully Submitted,

EFREN

ORDONEZ

Digitally signed by
EFREN ORDONEZ
Date: 2022.12.15
13:02:07 -06'00'

Efren Ordóñez
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102
Telephone (214) 665-2181
Ordonez.efren@epa.gov

CERTIFICATE OF SERVICE

I certify that the foregoing COMPLAINANT'S MOTION FOR EXTENSION OF PREHEARING ORDER DEADLINES was sent to the following persons, in the manner specified, on the date below:

Via Electronic Transmission Honorable Judge Christine Donelian Coughlin
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Ave., NW
Washington, D.C.
Facsimile: 916/550-9639

Via Electronic Transmission: Pete Domenici
Respondent's Attorney
320 Gold Ave. SW Suite 1000
Albuquerque, New Mexico 87102
pdomenici@domenicilaw.com

Date: December 15, 2022

EFREN
ORDONEZ
Digitally signed by
EFREN ORDONEZ
Date: 2022.12.15
13:02:45 -06'00'

Efren Ordóñez

Message

From: Ordonez, Efren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=81C174FAEDA5479691C4A4EED25D4D9E-ORDONEZ, EFREN]
Sent: 1/24/2023 3:39:26 PM
To: Vaughn, Lorena [Vaughn.Lorena@epa.gov]
Subject: RE: CAFO filing IMO Double M Properties

I need to change the order so that Tom can sign it, and also add a certificate of service page. Once this is done, we will get the document to you. Tom will need to sign it and file stamp it then I can electronically file with the ALJ. (This according to the email below.)

Efren

From: Vaughn, Lorena <Vaughn.Lorena@epa.gov>
Sent: Monday, January 23, 2023 5:06 PM
To: Ordonez, Efren <Ordonez.Efren@epa.gov>
Subject: RE: CAFO filing IMO Double M Properties

I have the original downstairs on your desk, I will send to Tom on Wednesday.
Does Cheryl Seager have to sign it?
And we will get it done. I kept thinking they filed it. Hmm I will talk to Tom.

From: Ordonez, Efren <Ordonez.Efren@epa.gov>
Sent: Monday, January 23, 2023 4:39 PM
To: Vaughn, Lorena <Vaughn.Lorena@epa.gov>
Subject: FW: CAFO filing IMO Double M Properties

I filed the CAFO with the ALJ but got the response specified below. I intend to file the CAFO with you and follow the instructions as specified in the email.
Efren

From: Angeles, Mary <Angeles.Mary@epa.gov>
Sent: Monday, January 23, 2023 3:12 PM
To: Ordonez, Efren <Ordonez.Efren@epa.gov>
Subject: CAFO filing IMO Double M Properties

Hello Mr. Ordonez. I cannot accept the filing (Consent Agreement and Final Order) submitted today through the OALJ E-Filing system. The appropriate official to sign the Final Order is the Regional Judicial Officer (RJO), not Judge Coughlin. Once the CAFO has been signed by the RJO, you should then file it with the RHC Lorena Vaughn, and a courtesy copy to our office via the OALJ E-filing system. The RHC will date stamp the CAFO, give you a copy, and you or Ms. Vaughn will submit an electronic copy through the OALJ E-filing system. Don't forget to attach a Certificate of Service. Let me know if you have any questions. Thank you.

*Best,
Mary Angeles (she/ella)
Office of Administrative Law Judges*



Be kind to the environment.
Please do not print this email unless necessary.

Standard USPS Mail:

Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Mail Code 1900R

Washington, DC 20460

Direct: 202.564.6281

Gen: 202.564.6255

Cell: 202-809-6807

Email: angeles.mary@epa.gov

Electronic Filing: https://yosemite.epa.gov/oa/eab/eab-alj_upload.nsf

Overnight USPS/FedEx/UPS:

Office of Administrative Law Judges
U.S. Environmental Protection Agency
Ronald Reagan Building (MC 1900R)

1300 Pennsylvania Ave., N.W.

Suite M1200

Washington, DC 20004

Message

From: Ordonez, Efren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=81C174FAEDA5479691C4A4EED25D4D9E-ORDONEZ, EFREN]
Sent: 7/6/2022 8:26:16 PM
To: pdomenici@domenicilaw.com
Subject: Double M Properties, Docket No. CWA-06-2022-1772

Mr. Domemnici,

I am the attorney assigned to the above-referenced EPA administrative case. Note that I have received your answer to the complaint and would like to discuss the matter. It is my understanding that a call was previously scheduled with your client for July 13th at 10:00 a.m. CT. If this time is convenient for me, we can keep the same date and time for the call. Please let me know what your preference is. When we have our call, Curry Jones, Carol Johnson, and I will participate for EPA. Once I hear back from you, I will send a scheduler.

Efren Ordóñez
Senior Attorney (ORC)
EPA, Region 6
(214)665-2181

Message

From: Ordonez, Efren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=81C174FAEDA5479691C4A4EED25D4D9E-ORDONEZ, EFREN]
Sent: 9/9/2022 4:43:09 PM
To: pdomenici@domenicilaw.com
Subject: Double M - status report and motion for extension of deadlines
Attachments: Double M status report and request for extension B.docx

Pete,

Here is the draft of the document I intend to file this afternoon. Please let me know if you have any concerns.
Efren

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§ DOCKET NO. CWA-06-2022-1772
	§
Double M Properties	§ Proceeding to Assess a Class II
	§ Civil Penalty under Section 309(g)
	§ of the Clean Water Act
Respondent	§
	§
NPDES ID. No. NMR1002AG	§

**COMPLAINANT'S STATUS REPORT AND MOTION FOR EXTENSION OF
PREHEARING ORDER DEADLINES**

COMES NOW COMPLAINANT, the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection agency (EPA), by and through its attorney, who provides the following status report regarding the above-captioned proceeding and submits a motion to extend the Prehearing Order deadlines.

1. On July 13, 2022, technical staffs from EPA and Respondent participated in a telephone conference call and discussed issues regarding case in an effort of resolving the matter. Following the technical conference call, Complainant's attorney and Respondent's attorney continued discussions regarding the case on August 26, 2022. At this point, the case has not been resolved.
2. The administrative complaint was filed with the Regional Hearing Clerk on July 7, 2022, with Respondent filing an answer on August 9, 2022. As a result of the communication between the parties, especially technical staffs, extensive information and documentation has been provided by Respondent. Complainant is reviewing and evaluating the Respondent's information. As a result, additional time is needed time.

3. Therefore, Complainant hereby requests an extension of 45 days regarding each of the Prehearing Exchange deadlines specified in the Prehearing Order, dated August 15, 2022.
4. The extension request is not sought for delay but rather to facilitate negotiations in an effort to resolve the pending issues.
5. Complainant's attorney has discussed the Motion for Extension of Prehearing Order deadlines, and Respondent's attorney has expressed approval of the extension and has no objection.

FOR THESE REASONS, Complainant respectfully request that this Motion be granted and that each of the PREHEARING ORDER deadlines regarding the Prehearing Exchange be extended by 45 days.

Respectfully Submitted,

Efren Ordóñez
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102
Telephone (214) 665-2181
[HYPERLINK "mailto:Ordonez.efren@epa.gov"]

CERTIFICATE OF SERVICE

I certify that the foregoing COMPLAINANT'S STATUS REPORT AND MOTION FOR EXTENSION OF PREHEARING ORDER DEADLINES was sent to the following persons, in the manner specified, on the date below:

Via Facsimile: Honorable Judge Christine Donelian Coughlin
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Ave., NW
Washington, D.C.
Facsimile: 916/550-9639

Via Electronic Transmission: Pete Domenici
Respondent's Attorney
320 Gold Ave. SW Suite 1000
Albuquerque, New Mexico 87102
[HYPERLINK "mailto:pdomenici@domenicilaw.com"]

Date: September 9, 2022

Efren Ordóñez

Message

From: Ordonez, Efren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=81C174FAEDA5479691C4A4EED25D4D9E-ORDONEZ, EFREN]
Sent: 9/9/2022 7:36:20 PM
To: pdomenici@domenicilaw.com
Subject: Double M Properties
Attachments: Double M Status Report and Motion to Extend Deadlines.pdf; Preliminary Statement.pdf

Attached please find the Complainant's Status Report and Motion for Extension of Prehearing Deadlines and Complainant's Preliminary Statement that have been filed with the ALJ.

Efren

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§ DOCKET NO. CWA-06-2022-1772
	§
Double M Properties	§ Proceeding to Assess a Class II
	§ Civil Penalty under Section 309(g)
	§ of the Clean Water Act
Respondent	§
	§
NPDES ID. No. NMR1002AG	§

**COMPLAINANT'S STATUS REPORT AND MOTION FOR EXTENSION OF
PREHEARING ORDER DEADLINES**

COMES NOW COMPLAINANT, the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection agency (EPA), by and through its attorney, who provides the following status report regarding the above-captioned proceeding and submits a motion to extend the Prehearing Order deadlines.

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2. The administrative complaint was filed with the Regional Hearing Clerk on July 7, 2022, with Respondent filing an answer on August 9, 2022. As a result of the communication between the parties, especially technical staffs, extensive information and documentation has been provided by Respondent. Complainant is reviewing and evaluating the Respondent's information. As a result, additional time is needed time.

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4. The extension request is not sought for delay but rather to facilitate negotiations in an effort to resolve the pending issues.
5. Complainant's attorney has discussed the Motion for Extension of Prehearing Order deadlines, and Respondent's attorney has expressed approval of the extension and has no objection.

FOR THESE REASONS, Complainant respectfully request that this Motion be granted and that each of the PREHEARING ORDER deadlines regarding the Prehearing Exchange be extended by 45 days.

Respectfully Submitted,

**EFREN
ORDONEZ**

Digitally signed by EFREN
ORDONEZ
Date: 2022.09.09 14:15:20
-05'00'

Efren Ordóñez
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102
Telephone (214) 665-2181
Ordonez.efren@epa.gov

CERTIFICATE OF SERVICE

I certify that the foregoing COMPLAINANT'S STATUS REPORT AND MOTION FOR EXTENSION OF PREHEARING ORDER DEADLINES was sent to the following persons, in the manner specified, on the date below:

Via E-filing: Honorable Judge Christine Donelian Coughlin
 U.S. Environmental Protection Agency
 Office of Administrative Law Judges
 1200 Pennsylvania Ave., NW
 Washington, D.C.
 Facsimile: 916/550-9639

Via Electronic Transmission: Pete Domenici
 Respondent's Attorney
 320 Gold Ave. SW Suite 1000
 Albuquerque, New Mexico 87102
 pdomenici@domenicilaw.com

Date: September 9, 2022

EFREN
ORDONEZ
Efren Ordóñez

Digitally signed by
EFREN ORDONEZ
Date: 2022.09.09
14:16:07 -05'00'

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§ DOCKET NO. CWA-06-2022-1772
	§
Double M Properties	§ Proceeding to Assess a Class II
	§ Civil Penalty under Section 309(g)
	§ of the Clean Water Act
Respondent	§
	§
NPDES ID. No. NMR1002AG	§

COMPLAINANT'S PRELIMINARY STATEMENT

COMES NOW COMPLAINANT, the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection agency (EPA), by and through its attorney, who provides the following Preliminary Statement:

1. Complainant's preference regarding the location of the hearing is Las Lunas, New Mexico.
2. Complainant consents to service of orders and decisions by the Administrative Law Judge in this case and to service of documents filed by Respondent by email only during this proceeding.
3. Complainant will accept service at Ordonez.efren@epa.gov.

Respectfully Submitted,

EFREN
ORDONEZ

Digitally signed by EFREN
ORDONEZ
Date: 2022.09.09 14:23:55
-05'00'

Efren Ordóñez
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102
Telephone (214) 665-2181
Ordonez.efren@epa.gov

CERTIFICATE OF SERVICE

I certify that the foregoing COMPLAINANT'S PRELIMINARY STATEMENT was sent to the following persons, in the manner specified, on the date below:

Via E-Filing: Honorable Christine Donelian Coughlin
 U.S. Environmental Protection Agency
 Office of Administrative Law Judges
 1200 Pennsylvania Ave., NW
 Washington, D.C.
 Facsimile: 916/550-9639

Via Electronic Transmission: Pete Domenici
 Respondent's Attorney
 320 Gold Ave. SW Suite 1000
 Albuquerque, New Mexico 87102
 pdomenici@domenicilaw.com

Date: September 9, 2022

EFREN
ORDONEZ
Efren Ordonez

Digitally signed by EFREN
ORDONEZ
Date: 2022.09.09 14:24:33
-05'00'

Message

From: Ordonez, Efren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=81C174FAEDA5479691C4A4EED25D4D9E-ORDONEZ, EFREN]
Sent: 1/26/2023 4:43:06 PM
To: pdomenici@domenicilaw.com
Subject: Double M Properties
Attachments: Double M Proprties CAFO - signed.pdf

Pete,

I am attaching the fully executed CAFO. As you already know, please note the payment provisions in the CAFO with the applicable deadlines.

Efren

FILED

UNITED STATES 23 JAN 25 AM 10: 25
ENVIRONMENTAL PROTECTION AGENCY
REGION 6 REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of	§	DOCKET NO. CWA-06-2022-1772
	§	
Double M Properties	§	Proceeding to Assess a Class II
	§	Civil Penalty under Section 309(g)
	§	of the Clean Water Act
Respondent	§	
	§	
NPDES ID. No. NMR1002AG	§	

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (CAFO) is issued under the authority vested in the United States Environmental Protection Agency (EPA) pursuant to Section 309(g) of the Clean Water Act (herein "the Act"), 33 U.S.C. § 1319(g). This CAFO is issued in accordance with 40 C.F.R. § 22.18, as described in the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" in order to settle and resolve this matter.
2. On July 7, 2022, EPA Region 6 issued to Respondent an administrative complaint (complaint) under Section 309(g) of the Act, 33 U.S.C. § 1319(g), which proposed to assess a civil penalty against Respondent, and gave notice of Respondent's opportunity to request a hearing on the proposed administrative penalty assessment.
3. The Parties agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public's interest, and that the entry of this CAFO is the most

appropriate means of resolving such matters. Compliance with all the terms and conditions of this CAFO resolves only those violations alleged in the complaint.

4. The Respondent admits the jurisdictional allegations of the complaint; however, the Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in the complaint and enters this settlement to compromise disputed claims. The complaint states a claim upon which relief may be granted.

5. For purposes of resolving this proceeding only, Respondent expressly waives any right to contest the factual allegations or conclusions of law contained in the complaint and this CAFO and waives its right to appeal the Final Order set forth herein.

6. Before the taking of any testimony, and without adjudication of any issue of law or fact, the Parties agree to the terms of this CAFO and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated below.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. Double M Properties (Respondent) is a "person," as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

8. At all times relevant to the violations alleged in the Complaint (relevant time period), Respondent owned or operated the Legacy at Sierra Vista development, located 0.41 miles West of Jubilee Blvd. on NM-6, Los Lunas, Valencia County, New Mexico (facility) and was, therefore, an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

9. The Complaint alleged that at the relevant times: Respondent was a "person" that "owned or operated" a facility that was a "point source" subject to "discharges" of "pollutants" to identified "waters of the United States" within the meaning of Section 502 of the Act, 33

U.S.C. § 1362, and 40 C.F.R. § 122.2; Respondent and the facility were subject to the provisions of the Act, 33 U.S.C. §§ 1251-1387 *et seq.*, and the National Pollutant Discharge Elimination System (NPDES) program.

10. With the issuance of the complaint, the State of New Mexico was notified and given an opportunity to consult with EPA regarding the proposed assessment of an administrative penalty against Respondent.

11. EPA notified the public of the complaint via the internet at www.epa.gov/region6/publicnotice, and afforded the public thirty (30) days to comment on the complaint and proposed penalty. At the expiration of the notice period, EPA received no comments from the public.

III. TERMS OF SETTLEMENT

A. PENALTY PROVISIONS

12. Based on the foregoing Findings of Fact and Conclusions of Law, EPA Region 6, considering the relevant criteria pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), and acting pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), the Parties agree that Respondent shall pay to the United States the amount of Fifteen Thousand dollars (\$15,000) to settle the violations as alleged in the Complaint, in accordance with 40 C.F.R. § 22.18(c).

13. Payment shall be made by one of the following methods within thirty (30) days of the effective date of this CAFO to the following address:

- a. By mailing a bank check, cashier's check or certified check, payable to "Treasurer of the United States," to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

- b. By wire transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

- c. By overnight mail (Express, FedEx, DHL, etc.):

U.S. Bank
1005 Convention Plaza
SL-MO-C2GL
St. Louis, MO 63101
Phone: 314-418-4087

- d. By credit card payments to <https://www.pay.gov>
(Insert sfo 1.1 in the search field)

In the Matter of Double M Properties, Docket No. CWA-06-2022-1772, should be clearly marked on the check to ensure credit for payment.

14. Respondent shall send simultaneous notice of payment, including a copy of the check, to each of the following:

- a. Regional Hearing Clerk (6RC-D)
i. U.S. EPA, Region 6
ii. 1201 Elm Street, Suite 500
iii. Dallas, TX 75270-2102

- b. Chief, Water Resource Section (ECD-WR)
 - i. U.S. EPA, Region 6
 - ii. 1201 Elm Street, Suite 500
 - iii. Dallas, TX 75270-2102
- c. Chief, Water Legal Branch (6RC-EW)
 - i. U.S. EPA, Region 6
 - ii. 1201 Elm Street, Suite 500
 - iii. Dallas, TX 75270-2102

Respondent's adherence to these procedures will ensure proper credit when payment is received by EPA.

15. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

16. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

17. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt

which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

18. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses including, but not limited to, attorneys fees' and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 20 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

19. Failure by Respondent to pay the penalty assessed according to the terms of this CAFO, in full, by its due date, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest and penalties.

20. In the event a collection action is necessary, Respondent shall pay - in addition to any applicable penalty, fees, and interest described herein - all reasonable costs and expenses, including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for nonpayment of the amounts agreed hereunder, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In any such collection action, the validity, amount, and appropriateness of the penalty, and the terms of this CAFO shall not be subject to review.

B. GENERAL PROVISIONS

21. To execute this Agreement, Respondent shall sign and forward this copy of the CAFO, with original signature, to:

Efren Ordóñez
Office of Regional Counsel (6RC-EW)
U.S. EPA Region 6
1201 Elm Street, Suite 500
Dallas, TX 7527002102
Ordonez.efren@epa.gov

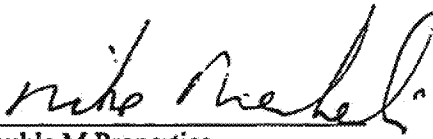
22. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, as described in Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of Respondent's permits or other requirements of the Act by actions pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

23. The provisions of this CAFO shall be binding upon Respondent.

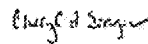
24. Each party agrees to bear its own costs and attorneys' fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the payment terms of this CAFO.

25. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.

26. In recognition and acceptance of the foregoing:


For Double M Properties

1/6/23
Date:


Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Digitally signed by Seager,
Cheryl
Date: 2023.01.19 13:48:15
-06'00'

January 19, 2023
Date:

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers', agents', servants', employees', successors', or assigns') obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. This CAFO shall become effective thirty (30) days after the issuance date specified below pursuant to Section 309(g)(5) of the Clean Water Act, 33 U.S.C. § 1319(g)(5).

Issuance Date: _____

THOMAS
RUCKI

Digitally signed by THOMAS RUCKI
DN: cn=US, o=U.S. Government,
ou=Environmental Protection Agency,
c=US, email=THOMAS.RUCKI,
3.9.2342.19203300.100.1.1=6A801033655804
Date: 2023.01.25 09:36:07 -0500

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT FINAL ORDER was sent to following persons, in the manner specified, on the date below:

Via Electronic Transmission: Honorable Judge Christine Donelian Coughlin
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Ave., NW
Washington, D.C.
Facsimile: 916/550-9639

Via Electronic Transmission and U.S. Mail: Pete Domenici
Respondent's Attorney
320 Gold Ave. SW Suite 1000
Albuquerque, New Mexico 87102
pdomenici@domenicilaw.com

Date: _____

EFREN
ORDONEZ
Digitally signed by
EFREN ORDONEZ
Date: 2023.01.25
14:29:33 -06'00'

Message

From: Ordonez, Efren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=81C174FAEDA5479691C4A4EED25D4D9E-ORDONEZ, EFREN]
Sent: 11/2/2022 8:14:22 PM
To: pdomenici@domenicilaw.com
Subject: Double M
Attachments: Double M Motion to Extend Deadlines.docx

I started working on the CAFO and will get it to you soon. As we discussed, we will need an extension of the deadlines, so I am attaching a proposed motion. Note that I put 60 days instead of 45 because of the holidays and the concurrence process. Please let me know if this or any other part of the motion is a concern. Once I hear back from you, I will file the motion.

Efren

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§ DOCKET NO. CWA-06-2022-1772
	§
Double M Properties	§ Proceeding to Assess a Class II
	§ Civil Penalty under Section 309(g)
	§ of the Clean Water Act
Respondent	§
	§
NPDES ID. No. NMR1002AG	§

**COMPLAINANT'S MOTION FOR EXTENSION OF PREHEARING ORDER
DEADLINES**

COMES NOW COMPLAINANT, the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), by and through her attorney, who provides the following motion regarding the above-captioned proceeding.

1. The administrative complaint was filed with the Regional Hearing Clerk on July 7, 2022, with Respondent filing an answer on August 9, 2022. A Prehearing Order was issued on September 16, 2022, specifying deadlines for the parties.
2. As a result of the communication between the parties, especially technical staffs, extensive information, and documentation has been provided by Respondent.
3. The parties are very close to reaching a settlement in principle and are in the process of drafting language for a Consent Agreement and Final Order (CAFO). However, given the deadlines set by the Prehearing Order, the parties will not be able to file the CAFO by November 14, 2022. Complainant needs to get approval through the concurrence process to be able to send a finalized CAFO to Respondent for signature. Once the Respondent signs the CAFO, Complainant will then need to go through the concurrence process to

obtain the required EPA signature. Furthermore, because of the upcoming holidays, the concurrence process may be impacted. As a result, additional time is needed.

4. Therefore, Complainant hereby requests an extension of 60 days regarding each of the Prehearing Exchange deadlines specified in the Prehearing Order, dated September 16, 2022. It is anticipated by Complainant that the CAFO will be filed prior to the requested extension date.
5. The extension request is not sought for delay but rather to facilitate negotiations in an effort to resolve the pending issues.
6. Complainant's attorney has discussed the Motion for Extension of Prehearing Order deadlines, and Respondent's attorney has expressed approval of the extension and has no objection.

FOR THESE REASONS, Complainant respectfully request that this Motion be granted and that each of the PREHEARING ORDER deadlines regarding the Prehearing Exchange be extended by 60 days.

Respectfully Submitted,

Efren Ordóñez
Office of Regional Counsel
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102
Telephone (214) 665-2181
[HYPERLINK "mailto:Ordonez.efren@epa.gov"]

Message

From: Ordonez, Efren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=81C174FAEDA5479691C4A4EED25D4D9E-ORDONEZ, EFREN]
Sent: 7/8/2022 3:03:10 PM
To: pdomenici@domicilaw.com
Subject: Double M Properties, Docket No. CWA-06-2022-1772
Attachments: Double M filed APO.pdf

Mr. Domenici,

In regard the above-referenced case, your client received the administrative complaint previously and you submitted an answer. However, the complaint that was sent to your client was not file stamped by the Regional Hearing Clerk, so it never got into the administrative process system. As a result, the administrative complaint was filed and file stamped yesterday, and your client will receive the complaint by registered mail. Once your client receives the complaint, please resubmit your answer. I am attaching the file stamped complaint. If you're any concerns regarding this matter, please let me know.

Also, I have not received a response from you regarding the presently scheduled call for this coming Wednesday. Please let me know if you want to have the call then or if you prefer to schedule it for another day. y

Efren Ordóñez
Senior Attorney (ORC)
EPA, Region 6
(214)665-2181



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270-2102

July 7, 2022

CERTIFIED MAIL - RETURN RECEIPT REQUESTED:

Double M Properties
Bob Prewitt, Vice President
4400 Alameda Blvd. NE Suite E
Albuquerque, NM 87113
prewitt@swcp.com

Kerwin Hollowwa
Registered Agent
Spann Hollowwa & Artley
1304 Central Ave. SW
Albuquerque, NM 87102
shollowwa@shha.net

Re: Notice of Proposed Assessment of a Class II Civil Penalty
Docket Number: CWA-06-2022-1772
NPDES Facility Number: NMRI002AG

Dear Mr. Prewitt:

Enclosed is an Administrative Complaint (Complaint) issued to Double M Properties, Legacy at Sierra Vista development construction site (Sierra Vista), for violations of Section 301(a) of the Clean Water Act (33 U.S.C. § 1251 *et seq.*). The violations alleged are for unauthorized discharge of pollutants from Sierra Vista.

You have the right to request a hearing regarding the violations alleged in the Complaint and the proposed administrative civil penalty. Please refer to the enclosed Part 22, "Consolidated Rules of Practice," for information regarding hearing and settlement procedures. Should you fail to request a hearing within thirty days of receipt of the Complaint, you will waive your right to such a hearing, and the proposed civil penalty of \$115,530 may be assessed against you without further proceedings.

Whether or not you request a hearing, we invite you to confer informally with EPA. You may represent yourself, or be represented by an attorney at any conference, whether in person or by telephone. EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty to pursue the possibility of settlement as a result of an informal conference.

EPA is committed to ensuring compliance with the requirements of the National Pollutant Discharge Elimination System (NPDES) program. My staff will assist you in any way possible.

Re: Administrative Penalty Order
Double M Properties – Legacy at Sierra Vista

If you have any questions or wish to discuss the possibility of a settlement of this matter, please contact Ms. Carol Johnson, of my staff, at johnson.carol@epa.gov.

Sincerely,



Digitally signed by CHERYL
SEAGER
Date: 2022.07.07 16:01:10 -05'00'

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Enclosures

cc: w/complaint - Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

Ms. Shelly Lemon
Bureau Chief
Surface Water Quality Bureau
New Mexico Environment Department
shelly.lemon@state.nm.us

FILED

22 JUL -7 PM 4: 35

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

ADMINISTRATIVE HEARING CLERK
EPA REGION VI

In the Matter of	§ DOCKET NO. CWA-06-2022-1772
	§
Double M Properties	§ Proceeding to Assess a Class II
	§ Civil Penalty under Section 309(g)
	§ of the Clean Water Act
Respondent	§
	§
NPDES ID. No. NMR1002AG	§ ADMINISTRATIVE COMPLAINT

I. Statutory Authority

This Administrative Complaint (Complaint) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (the Act), 33 U.S.C. § 1319(g). The Administrator of EPA delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who delegated this authority to the Director of the Enforcement and Compliance Assurance Division of EPA Region 6 (Complainant). This Class II Administrative Complaint is issued in accordance with, and this action will be conducted under, the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," including rules related to administrative proceedings not governed by Section 554 of the Administrative Procedure Act.

Based on the following findings, Complainant finds that Double M Properties, violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

II. Findings of Fact and Conclusions of Law

1. Double M Properties (Respondent) is a "person" as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

2. At all times relevant to this action (all relevant times), Respondent owned or operated Legacy at Sierra Vista development, a 200-acre construction site, located at 0.43 miles West of Jubilee Blvd. on NM -6, Los Lunas, Valencia County, New Mexico (facility) and was, therefore, an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

3. At all times relevant, the facility acted as a "point source" of a "discharge" of "pollutant[s]" as defined by Section 502(12) & (14) of the Act, 33 U.S.C. §1362(12) & (14), to the receiving waters of an unnamed ephemeral stream, thence to an unnamed stream river, thence to the Hubbell Channel, thence to the Rio Grande, which is a "water of the United States," as defined by 40 C.F.R. § 122.2.

4. Because Respondent owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (NPDES) program.

5. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

6. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

7. Section 402(p) of the Act, 33 U.S.C. § 1342(p), requires that any discharge of storm water associated with an industrial activity must comply with the requirements of an NPDES permit.

8. Each person that meets the definition of "operator," and engages in construction defined as industrial activity by 40 C.F.R. § 122.26(b)(14)(x), must apply for and obtain NPDES permit

coverage before and during conducting activities that are subject to storm water discharges that carry pollutants to waters of the United States.

9. The facility is considered an industry under 40 C.F.R. § 122.26(b)(14)(x), and as such, is subject to the General Permit for Storm Water Discharges Associated with Construction Activity issued by EPA on May 14, 2019.

10. Respondent applied for and was issued coverage under the EPA Construction General Permit and was assigned NPDES Permit No. NMR1002AG by the EPA electronic Notice of Intent (NOI) Center on August 1, 2019, for 57 acres at Legacy at Sierra Vista (herein after referred to as "permit") under Section 402 of the Act, 33 U.S.C. § 1342.

11. Beginning April 3, 2020, Respondent cleared and graded 200 acres even though Respondent's permit only encompassed and authorized 57 acres. Therefore, Respondent was not authorized by permit regarding the extra 143 acres cleared and graded by Respondent.

12. On December 24, 2020, Respondent obtained permit coverage for the entire 200 acres. Therefore, Respondent did not have permit coverage for 143 acres from April 3, 2020, to December 23, 2020, and Respondent was not authorized to discharge pollutants from the facility to waters of the United States during this period.

13. Because Respondent did not have authorization to discharge pollutants from the facility from April 3, 2020, to December 23, 2020, from the 143 acres not covered by the permit, each storm water discharge from the facility during these time periods is a violation of Section 301 of the Act, 33 U.S.C. § 1311. Rain events for the area indicate unauthorized discharges from the facility on at least five (5) occasions between April 3, 2020, to December 23, 2020.

14. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), as modified by 40 C.F.R. Part 19, Respondent is liable for a civil penalty in an amount not to exceed \$23,989 per day for each day during which a violation continues, up to a maximum of \$299,857.

15. EPA has notified New Mexico Environmental Department (NMED) of the issuance of this Complaint and has afforded NMED an opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondent as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

16. EPA has notified the public of the filing of this Complaint and has afforded the public thirty (30) days in which to comment on the Complaint and on the proposed penalty as required by Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A). At the expiration of the notice period, EPA will consider any comments filed by the public.

III. Proposed Penalty

17. Based on the foregoing Findings, and pursuant to the Authority of Sections 309(g)(1) and (g)(2)(B) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(B), EPA hereby proposes to assess against Respondent a penalty of One hundred and fifteen thousand, five hundred and thirty dollars (\$115,530.00).

18. The proposed penalty amount was determined based on the statutory factors specified in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), which includes such factors as the nature, circumstances, extent and gravity of the violations, economic benefits, if any, prior history of such violations, if any, degree of culpability, and such matters as justice may require.

Complainant has specified that the administrative procedures specified in 40 C.F.R. Part 22, Subpart I, shall apply to this matter, and the administrative proceedings shall not be governed by Section 554 of the Administrative Procedure Act.

IV. Failure to File an Answer

19. If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, Respondent must file an Answer to

this Complaint within thirty (30) days after service of this Complaint whether or not Respondent requests a hearing as discussed below.

20. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15. Failure to file an Answer to this Complaint within thirty (30) days after service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

21. If Respondent does not file an Answer to this Complaint within thirty (30) days after service of this Complaint, a Default Order may be issued against Respondent pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability, and could make the full amount of the penalty proposed in this Complaint due and payable by Respondent without further proceedings thirty (30) days after a final Default Order is issued.

22. Respondent must send its Answer to this Complaint, including any request for hearing, and all other pleadings to:

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

23. Respondent shall also send a copy of its Answer to this Complaint to the following EPA attorney assigned to this case:

Mr. Efren Ordóñez (6RC-EW)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

24. The Answer must be signed by Respondent, Respondent's counsel, or other Representative on behalf of Respondent and must contain all information required by 40 C.F.R. §§ 22.5 and

22.15, including the name, address, and telephone number of Respondent and Respondent's counsel. All other pleadings must be similarly signed and filed.

V. Notice of Opportunity to Request a Hearing

25. Respondent may request a hearing to contest any material allegation contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). The procedures for hearings are set out at 40 C.F.R. Part 22, with supplemental rules at 40 C.F.R. § 22.38.

26. Any request for hearing should be included in the Respondent's Answer to this Complaint; however, as discussed above, Respondent must file an Answer to this Complaint meeting the requirements of 40 C.F.R. § 22.15 to preserve the right to a hearing or to pursue other relief.

27. Should a hearing be requested, members of the public who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to present evidence at such hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

VI. Settlement

28. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Ms. Carol Johnson, of my staff, at johnson.carol@epa.gov.

29. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. § 22.18(b). The issuance of a

CAFO would waive Respondent's right to a hearing on any matter stipulated therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and to hold a hearing on the issues raised in the Complaint. Such a petition would be granted, and a hearing held only if the evidence presented by petitioner's comment was material and was not considered by EPA in the issuance of the CAFO.

30. Neither assessment nor payment of a penalty in resolution of this action will affect Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), including one relating to the violations alleged herein.

July 7, 2022

Date

Chery T. Seager

Digitally signed by Chery T.
SEAGER
Date: 2022.07.07 13:57:21 -0500

Chery T. Seager, Director
Enforcement and
Compliance Assurance Division

CERTIFICATE OF SERVICE

I certify that the foregoing Class II Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered:	Regional Hearing Clerk (6RC-D) U.S. EPA, Region 6 1201 Elm Street, Suite 500 Dallas, TX 75270-2102
Copy by certified mail, Return receipt requested:	Double M Properties Bob Prewitt, Vice President 4400 Alameda Blvd. NE Suite E Albuquerque, NM 87113 prewitt@swcp.com Kerwin Hollowwa Registered Agent Spann Hollowwa & Artley 1304 Central Ave. SW Albuquerque, NM 87102 shollowwa@shha.net
Copy by email:	Ms. Shelly Lemon Bureau Chief Surface Water Quality Bureau New Mexico Environment Department shelly.lemon@state.nm.us
Copy by email:	Mr. Efren Ordóñez U.S. EPA, Region 6 Ordonez.efren@epa.gov

Dated: 7-7-2022



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§	DOCKET NO. CWA-06-2022-1772
	§	
Double M Properties	§	Proceeding to Assess a Class II
	§	Civil Penalty under Section 309(g)
Respondent	§	of the Clean Water Act
	§	
NPDES ID. No. NMR1002AG	§	

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (CAFO) is issued under the authority vested in the United States Environmental Protection Agency (EPA) pursuant to Section 309(g) of the Clean Water Act (herein "the Act"), 33 U.S.C. § 1319(g). This CAFO is issued in accordance with 40 C.F.R. § 22.18, as described in the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" in order to settle and resolve this matter.
2. On July 7, 2022, EPA Region 6 issued to Respondent an administrative complaint (complaint) under Section 309(g) of the Act, 33 U.S.C. § 1319(g), which proposed to assess a civil penalty against Respondent, and gave notice of Respondent's opportunity to request a hearing on the proposed administrative penalty assessment.
3. The Parties agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public's interest, and that the entry of this CAFO is the most

which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

18. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses including, but not limited to, attorneys fees' and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 20 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

19. Failure by Respondent to pay the penalty assessed according to the terms of this CAFO, in full, by its due date, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest and penalties.

20. In the event a collection action is necessary, Respondent shall pay - in addition to any applicable penalty, fees, and interest described herein - all reasonable costs and expenses, including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for nonpayment of the amounts agreed hereunder, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In any such collection action, the validity, amount, and appropriateness of the penalty, and the terms of this CAFO shall not be subject to review.

appropriate means of resolving such matters. Compliance with all the terms and conditions of this CAFO resolves only those violations alleged in the complaint.

4. The Respondent admits the jurisdictional allegations of the complaint; however, the Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in the complaint and enters this settlement to compromise disputed claims. The complaint states a claim upon which relief may be granted.

5. For purposes of resolving this proceeding only, Respondent expressly waives any right to contest the factual allegations or conclusions of law contained in the complaint and this CAFO and waives its right to appeal the Final Order set forth herein.

6. Before the taking of any testimony, and without adjudication of any issue of law or fact, the Parties agree to the terms of this CAFO and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated below.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. Double M Properties (Respondent) is a "person," as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

8. At all times relevant to the violations alleged in the Complaint (relevant time period), Respondent owned or operated the Legacy at Sierra Vista development, located 0.41 miles West of Jubilee Blvd. on NM-6, Los Lunas, Valencia County, New Mexico (facility) and was, therefore, an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

9. The Complaint alleged that at the relevant times: Respondent was a "person" that "owned or operated" a facility that was a "point source" subject to "discharges" of "pollutants" to identified "waters of the United States" within the meaning of Section 502 of the Act, 33

U.S.C. § 1362, and 40 C.F.R. § 122.2; Respondent and the facility were subject to the provisions of the Act, 33 U.S.C. §§ 1251-1387 *et seq.*, and the National Pollutant Discharge Elimination System (NPDES) program.

10. With the issuance of the complaint, the State of New Mexico was notified and given an opportunity to consult with EPA regarding the proposed assessment of an administrative penalty against Respondent.

11. EPA notified the public of the complaint via the internet at www.epa.gov/region6/publicnotice, and afforded the public thirty (30) days to comment on the complaint and proposed penalty. At the expiration of the notice period, EPA received no comments from the public.

III. TERMS OF SETTLEMENT

A. PENALTY PROVISIONS

12. Based on the foregoing Findings of Fact and Conclusions of Law, EPA Region 6, considering the relevant criteria pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), and acting pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), the Parties agree that Respondent shall pay to the United States the amount of Fifteen Thousand dollars (\$15,000) to settle the violations as alleged in the Complaint, in accordance with 40 C.F.R. § 22.18(c).

13. Payment shall be made by one of the following methods within thirty (30) days of the effective date of this CAFO to the following address:

- a. By mailing a bank check, cashier's check or certified check, payable to "Treasurer of the United States," to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

- b. By wire transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

- c. By overnight mail (Express, FedEx, DHL, etc.):

U.S. Bank
1005 Convention Plaza
SL-MO-C2GL
St. Louis, MO 63101
Phone: 314-418-4087

- d. By credit card payments to <https://www.pay.gov>
(Insert sfo 1.1 in the search field)

In the Matter of Double M Properties, Docket No. CWA-06-2022-1772, should be clearly marked on the check to ensure credit for payment.

14. Respondent shall send simultaneous notice of payment, including a copy of the check, to each of the following:

- a. Regional Hearing Clerk (6RC-D)
i. U.S. EPA, Region 6
ii. 1201 Elm Street, Suite 500
iii. Dallas, TX 75270-2102

- b. Chief, Water Resource Section (ECD-WR)
 - i. U.S. EPA, Region 6
 - ii. 1201 Elm Street, Suite 500
 - iii. Dallas, TX 75270-2102
- c. Chief, Water Legal Branch (6RC-EW)
 - i. U.S. EPA, Region 6
 - ii. 1201 Elm Street, Suite 500
 - iii. Dallas, TX 75270-2102

Respondent's adherence to these procedures will ensure proper credit when payment is received by EPA.

15. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

16. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

17. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt

B. GENERAL PROVISIONS

21. To execute this Agreement, Respondent shall sign and forward this copy of the CAFO, with original signature, to:

Efren Ordóñez
Office of Regional Counsel (6RC-EW)
U.S. EPA Region 6
1201 Elm Street, Suite 500
Dallas, TX 7527002102
Ordonez.efren@epa.gov

22. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, as described in Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of Respondent's permits or other requirements of the Act by actions pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

23. The provisions of this CAFO shall be binding upon Respondent.

24. Each party agrees to bear its own costs and attorneys' fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the payment terms of this CAFO.

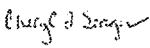
25. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.

26. In recognition and acceptance of the foregoing:



For Double M Properties

1/6/23
Date:



Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Digitally signed by Seager,
Cheryl
Date: 2023.01.19 13:48:15
-06'00'

January 19, 2023
Date:

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers', agents', servants', employees', successors', or assigns') obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. This CAFO shall become effective thirty (30) days after the issuance date specified below pursuant to Section 309(g)(5) of the Clean Water Act, 33 U.S.C. § 1319(g)(5).

Issuance Date: _____
Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT FINAL ORDER was sent to following persons, in the manner specified, on the date below:

Via Electronic Transmission: Honorable Judge Christine Donelian Coughlin
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Ave., NW
Washington, D.C.
Facsimile: 916/550-9639

Via Electronic Transmission Pete Domenici
and U.S. Mail: Respondent's Attorney
320 Gold Ave. SW Suite 1000
Albuquerque, New Mexico 87102
pdomenici@domenicilaw.com

Date: _____

Message

From: Ordonez, Efren [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=81C174FAEDA5479691C4A4EED25D4D9E-ORDONEZ, EFREN]
Sent: 1/23/2023 6:30:43 PM
To: pdomenici@domenicilaw.com
Subject: Double M Properties CAFO
Attachments: Double M Properties CAFO.pdf

Please note that I filed the attached proposed signed CAFO with the ALJ today.
Efren

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§	DOCKET NO. CWA-06-2022-1772
	§	
Double M Properties	§	Proceeding to Assess a Class II
	§	Civil Penalty under Section 309(g)
Respondent	§	of the Clean Water Act
	§	
NPDES ID. No. NMR1002AG	§	

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

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which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

18. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses including, but not limited to, attorneys fees' and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 20 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

19. Failure by Respondent to pay the penalty assessed according to the terms of this CAFO, in full, by its due date, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest and penalties.

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U.S.C. § 1362, and 40 C.F.R. § 122.2; Respondent and the facility were subject to the provisions of the Act, 33 U.S.C. §§ 1251-1387 *et seq.*, and the National Pollutant Discharge Elimination System (NPDES) program.

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11. EPA notified the public of the complaint via the internet at www.epa.gov/region6/publicnotice, and afforded the public thirty (30) days to comment on the complaint and proposed penalty. At the expiration of the notice period, EPA received no comments from the public.

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12. Based on the foregoing Findings of Fact and Conclusions of Law, EPA Region 6, considering the relevant criteria pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), and acting pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), the Parties agree that Respondent shall pay to the United States the amount of Fifteen Thousand dollars (\$15,000) to settle the violations as alleged in the Complaint, in accordance with 40 C.F.R. § 22.18(c).

13. Payment shall be made by one of the following methods within thirty (30) days of the effective date of this CAFO to the following address:

- a. By mailing a bank check, cashier's check or certified check, payable to "Treasurer of the United States," to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

- b. By wire transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

- c. By overnight mail (Express, FedEx, DHL, etc.):

U.S. Bank
1005 Convention Plaza
SL-MO-C2GL
St. Louis, MO 63101
Phone: 314-418-4087

- d. By credit card payments to <https://www.pay.gov>
(Insert sfo 1.1 in the search field)

In the Matter of Double M Properties, Docket No. CWA-06-2022-1772, should be clearly marked on the check to ensure credit for payment.

14. Respondent shall send simultaneous notice of payment, including a copy of the check, to each of the following:

- a. Regional Hearing Clerk (6RC-D)
i. U.S. EPA, Region 6
ii. 1201 Elm Street, Suite 500
iii. Dallas, TX 75270-2102

- b. Chief, Water Resource Section (ECD-WR)
 - i. U.S. EPA, Region 6
 - ii. 1201 Elm Street, Suite 500
 - iii. Dallas, TX 75270-2102
- c. Chief, Water Legal Branch (6RC-EW)
 - i. U.S. EPA, Region 6
 - ii. 1201 Elm Street, Suite 500
 - iii. Dallas, TX 75270-2102

Respondent's adherence to these procedures will ensure proper credit when payment is received by EPA.

15. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

16. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

17. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt

B. GENERAL PROVISIONS

21. To execute this Agreement, Respondent shall sign and forward this copy of the CAFO, with original signature, to:

Efren Ordóñez
Office of Regional Counsel (6RC-EW)
U.S. EPA Region 6
1201 Elm Street, Suite 500
Dallas, TX 7527002102
Ordonez.efren@epa.gov

22. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, as described in Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of Respondent's permits or other requirements of the Act by actions pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

23. The provisions of this CAFO shall be binding upon Respondent.

24. Each party agrees to bear its own costs and attorneys' fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the payment terms of this CAFO.

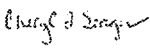
25. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.

26. In recognition and acceptance of the foregoing:



For Double M Properties

1/6/23
Date:



Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Digitally signed by Seager,
Cheryl
Date: 2023.01.19 13:48:15
-06'00'

January 19, 2023
Date:

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers', agents', servants', employees', successors', or assigns') obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. This CAFO shall become effective thirty (30) days after the issuance date specified below pursuant to Section 309(g)(5) of the Clean Water Act, 33 U.S.C. § 1319(g)(5).

Issuance Date: _____
Christine Donelian Coughlin
Administrative Law Judge